

PLAINTIFF'S EXHIBIT NUMBER:

3

IN THE CIRCUIT COURT OF DEKALB COUNTY ALABAMA
CIVIL ACTION NO.: 08-183

LARRY DAVID WOOD, JR., and
KAREN WILBORN WOOD,
Individuals,

Plaintiffs,

vs.

OPTION ONE MORTGAGE CORPORATION,
WELLS FARGO BANK, N.A.,
FIDELITY NATIONAL FORECLOSURE &
BANKRUPTCY SOLUTIONS,

Defendants.

VIDEOTAPED DEPOSITION OF
BILL NEWLAND

Taken on behalf of the Plaintiffs

| | |
|--------------|--|
| DATE TAKEN: | Tuesday, June 16, 2009 |
| TIME: | 9:10 a.m. - 5:30 p.m. |
| PLACE: | Fidelity National 601 Riverside Avenue Jacksonville, Florida |
| REPORTED BY: | Cindy D. McClary, RPR, CRR |

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ALSO PRESENT

SHERYL L. NEWMAN, LPS

ASHLEY HOLT, VIDEOGRAPHER

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1 **THE VIDEOGRAPHER:** This begins Videotape
2 No. 1 in the deposition of Bill Newland in the
3 matter of Larry David Wood, Jr., and Karen
4 Wilborn Wood versus Option One Mortgage
5 Corporation, et al., Case No. 08-183 in the Court
6 of DeKalb County, Alabama.

7 We are on the record at 9:10 a.m. on
8 Tuesday, June 16th, 2009. This deposition is
9 taking place at Fidelity National in
10 Jacksonville, Florida.

11 My name is Ashley Holt, representing Freedom
12 Court Reporting. Will counsel please identify
13 themselves and state whom you represent, and the
14 court reporter please swear in the witness.

15 **MR. WOOTEN:** My name is Nick Wooten, and I
16 represent the plaintiffs in this action.

17 **MR. CASH:** My name is Mike Cash, and I
18 represent Fidelity National Foreclosure &
19 Bankruptcy Solutions, a defendant in this action
20 currently.

21 **MR. LAWLER:** My name is Will Lawler, and I
22 represent Option One Mortgage Corporation, a
23 defendant in this action.
24
25

1 BILL NEWLAND,
2 having been produced and first duly sworn as a
3 witness, testified as follows:

4 THE WITNESS: Yes.

5 DIRECT EXAMINATION

6 BY MR. WOOTEN:

7 Q Mr. Wooten, my -- Mr. Newland, my name is
8 Nick Wooten, I think you heard me introduce myself. I
9 hadn't had the opportunity to meet you prior to today.
10 Have you ever given a deposition before today?

11 A Yes, I have.

12 Q Tell me about that. How many times have you
13 been deposed, sir?

14 A I've been deposed once.

15 Q What was that in reference to?

16 A Reference to a case here at Fidelity.

17 Q Okay. And was that where Fidelity was a
18 defendant in an action?

19 A Yes, it was.

20 Q Okay. Did you serve as a 30(b)(6) witness
21 for Fidelity at that time?

22 A I don't understand the question.

23 Q Did you testify individually or as a
24 corporate representative of Fidelity?

25 A Individually.

1 Q Okay. So you were a fact witness to that
2 specific case?

3 A Yes.

4 Q I understand that you've played some role in
5 this case up to this point with respect to answering
6 interrogatories and propounding affidavits; is that
7 correct?

8 A Yes, it is.

9 Q So I take it from that that you have
10 personally made yourself familiar with this litigation
11 and the allegations that have been made; is that
12 correct?

13 A Yes, it is.

14 Q If you will, sir, please tell me how long
15 you've been an employee of Fidelity National
16 Foreclosure Services.

17 A Approximately five years.

18 Q Okay. How long have you been employed as a
19 vice president?

20 A Approximately four years.

21 Q The position that you currently hold,
22 exactly what is your title?

23 A I'm first vice president of operations.

24 Q What are your responsibilities with that
25 title, please, sir?

1 A I have primary oversight for the
2 Jacksonville facility and also manage our attorney
3 management area and special assets for our foreclosure
4 department.

5 Q What is a special asset in the foreclosure
6 department?

7 A Basically, we handle title resolution,
8 assist in correspondence with title resolution,
9 probates, things of that nature.

10 Q Have you held any other titles as an
11 employee of Fidelity?

12 A I held a title primarily when I was hired on
13 here as assistant vice president.

14 Q Okay.

15 MR. CASH: Just for the record to be clear,
16 can we make an agreement that when we use the
17 term Fidelity, we're talking about the defendant
18 Fidelity National Foreclosure & Bankruptcy
19 Solutions? Then we just don't have to repeat it
20 every time.

21 MR. WOOTEN: It'll probably save my tongue,
22 so, frankly, that'll be fine with me.

23 MR. CASH: Okay.

24 BY MR. WOOTEN:

25 Q I think that's what the industry more or

1 less refers to you guys as anyway, right, Fidelity?

2 A Not any longer, no.

3 Q Actually, you're now LPS, right?

4 A That is correct.

5 Q And what does that stand for?

6 A Lender Processing Solutions.

7 Q And that is an entity which spun off of your
8 parent corporation; is that correct?

9 A Yes.

10 Q Okay. And when did that spinoff take place?

11 A July of '08.

12 Q And do you have any understanding as to what
13 the motivation was to take LPS out from under the
14 broader umbrella as a separate company?

15 A No, I do not.

16 Q Were you involved in that decision at all?

17 A No, I was not.

18 Q Prior to coming -- well, let me just make
19 sure I'm clear about this. You've only held two
20 positions with Fidelity, one is a vice president and
21 the other is first vice president of operations?

22 A I've held three. I was assistant vice
23 president, I was promoted to vice president then
24 promoted to first vice president.

25 Q So your entry point was as assistant vice

1 president?

2 A Yes, it was.

3 Q And what year was that?

4 A September of 2004.

5 Q And when were you promoted to vice
6 president?

7 A I want to say it was approximately March of
8 '05.

9 Q Did you have a specific area of
10 responsibility with that description?

11 A Which description?

12 Q Vice president.

13 A Primary responsibility stayed the same.

14 Q Okay. And that was what you set out
15 earlier?

16 A Yes.

17 Q And when were you promoted to first vice
18 president of operations?

19 A I don't recall off the top of my head.

20 Q Prior to working for Fidelity, where were
21 you previously employed?

22 A Option One Mortgage.

23 Q And did you leave Option One and come
24 directly to Fidelity?

25 A After 30 days of being nonemployed, yes.

1 Q How long were you employed by Option One,
2 sir?

3 A Approximately 18 months.

4 Q 18 months?

5 A Uh-huh.

6 Q And how were you employed by Option One?

7 A I held the title of assistant vice
8 president.

9 Q Did you have a specific area that you were
10 assistant vice president to?

11 A Loss mitigation, foreclosure, and
12 bankruptcy.

13 Q Was Option One a Fidelity partner at that
14 time?

15 A We had just become a partner approximately
16 two months prior to me leaving.

17 Q And what was the term of your employment
18 with Option One?

19 A 18 months.

20 Q So from February of 2005, previous 18
21 months?

22 A No, I started here in September of 2004.

23 Q I'm sorry. I was looking at your -- wrong
24 date. I apologize. Looking at your vice president,
25 date you were promoted.

1 So you would've worked for Option One in
2 2003 and part of 2004?

3 A That's correct.

4 Q And your testimony is, is during that time,
5 you were not a Fidelity partner until approximately 60
6 days prior to your leaving?

7 A For the -- that's correct.

8 Q Prior to Option One, where did you work?

9 A I worked for Ocwen Federal Bank.

10 Q How long were you employed by Ocwen?

11 A Five and a half years.

12 Q What period of time was that, if you recall,
13 please, sir?

14 A I want to say it was August of '97 through
15 February of 2003.

16 Q Do you remember the position you were hired
17 on at at Ocwen?

18 A That I was hired on at? I was a team leader
19 over loss mitigation department.

20 Q Because everybody who may eventually hear or
21 see this testimony doesn't understand what we mean
22 when we say loss mitigation, would you, please,
23 explain that for me.

24 A We provided assistance to the borrowers in
25 attempting to resolve their delinquency through some

1 type of means of mitigation.

2 Q So that was where you might work out a
3 forbearance or payment plan or modification, if the
4 circumstance were appropriate, that sort of thing?

5 A That would be correct.

6 Q And the goal of loss mitigation generally is
7 to prevent a foreclosure or loss of a home, is that
8 the general goal?

9 A That's correct.

10 Q Other than loss mitigation, at the time you
11 were hired, did you do any other -- or perform any
12 other function at Ocwen?

13 A I also managed front-end collections, which
14 would be your zero to 90-day collections.

15 Q Would it be fair to say that the front-end
16 collections are those borrowers who are not current
17 but have not been declared to be in default?

18 A That would be correct.

19 Q And so, in that regard, sort of more or less
20 a proactive loss mitigation approach to try to keep
21 those people from trying to go into default, right?

22 A Yes.

23 Q How long were you in that position with
24 Ocwen?

25 A Approximately three years.

1 Q So sometime in 1999 or early 2000 you
2 changed positions with respect to that?

3 A Yes.

4 Q Where did you go to from loss mitigation?

5 A I went back to the -- well, I went from loss
6 mitigation to collections and then went back to loss
7 mitigation as the director.

8 Q So when -- did you maintain the title of
9 team leader up until the time that you went to
10 collections?

11 A No.

12 Q Okay. So what other titles did you hold in
13 loss mitigation?

14 A I held the title of director of operations.

15 Q So did you advance directly from team leader
16 to director of operations, or were there intermediate
17 advancements?

18 A There was -- there were intermediate
19 promotions between that.

20 Q I'm assuming that you would've gone from
21 team leader to either manager or vice president?

22 A Yes.

23 Q Okay. Both or --

24 A No.

25 Q -- one?

1 A No, I went from team lead, then I went to --
2 as a manager for the collections department, and then
3 to the senior manager of that department. And then I
4 moved to director of operations for loss mitigation.

5 Q The collections department is a different
6 department than loss mitigation, right?

7 A Yes, it is.

8 Q And the collection department at Ocwen, how
9 would that have been defined? What was its function?

10 A As I stated previously, it was basically to
11 collect on moneys owed that were delinquencies that
12 were zero to 90 days.

13 Q So it is what you referenced earlier as
14 front-end collections?

15 A Yes.

16 Q Okay. I'm sorry, I didn't realize that you
17 were not distinguishing between the two.

18 So at what point did you move from senior
19 manager of collections to director of operations of
20 loss mitigation?

21 A It would've been -- I don't recall off the
22 top of my head, but it was about -- it was about a
23 year and a half prior to me leaving --

24 Q Okay.

25 A -- Ocwen, so, whatever that date is.

1 Q So you would've been in collections from
2 sometime in '99 or 2000 until about 2000 -- late 2001,
3 early 2002?

4 A Collections was -- when I started in
5 front-end collections, it was early 1998.

6 Q All right.

7 A And spent two years in early collections.
8 So, approximately, probably, late to mid -- mid 2000
9 is when I went into loss mitigation.

10 Q And that's when you became the director of
11 operations --

12 A Yes.

13 Q -- there? And you held that title until you
14 left that position?

15 A That's correct.

16 Q As part of your work as director of
17 operations in loss mitigation, were you ever deposed
18 as an employee of Ocwen Federal Bank?

19 A No, I was not.

20 Q Where was Ocwen Federal Bank? Where was
21 your employment located with them during this period
22 of time?

23 A Orlando, Florida.

24 Q Are there any other titles or positions that
25 you held with Ocwen Federal Bank --

1 A No.

2 Q -- during this time?

3 A No.

4 Q During this period of time, was Ocwen
5 Federal Bank subject to any state or federal
6 investigation with respect to their lending or
7 mortgage service and practices?

8 A I don't recall.

9 Q Did you ever give any testimony with respect
10 to any state or federal investigation?

11 A No, I did not.

12 Q Is it your testimony today that you never
13 testified as an employee of Ocwen Federal Bank or as a
14 corporate representative in any litigation?

15 A Not that I'm aware of.

16 Q As part of your work, did you provide for
17 Ocwen Federal Bank any affidavits or any other type of
18 documents which would've been filed in any federal --
19 or any lawsuit or litigation involving Ocwen Federal
20 Bank?

21 A I don't recall.

22 Q Prior to Ocwen Federal Bank, where were you
23 employed, sir?

24 A I was employed with a company called -- I'm
25 trying to think of the -- it was Premiere Credit was

1 the name of the company, but it's now, I believe,
2 Outsourcing Solutions, Incorporated.

3 Q Is Outsourcing Solutions also commonly known
4 by the acronym OSI?

5 A I believe so.

6 Q Is it fair to say that OSI is a debt
7 collection agency?

8 A Yes, it is.

9 Q And they purchase delinquent account
10 receivables; is that correct?

11 A I don't recall what they're purchasing.

12 Q But you understand their business to be that
13 of debt collection?

14 A Yes.

15 Q And how were you employed by OSI?

16 A I was a manager of a group there.

17 Q Manager of a collection group?

18 A Yes.

19 Q When did your employment with OSI begin and
20 when did it end?

21 A I don't recall off the top of my head. I
22 know it ended in August of 1997.

23 Q Why did your employment end with OSI?

24 A I took an opportunity to go to Ocwen Federal
25 Bank.

1 Q During your time at OSI, were you ever a
2 witness where you gave either deposition or live
3 testimony in any litigation?

4 A No, I did not.

5 Q Did you ever serve as a corporate
6 representative of OSI in any litigation?

7 A No, I did not.

8 Q At the time that you were employed with OSI
9 in managing its collections group, did OSI file
10 lawsuits to collect on their accounts receivable?

11 A I don't recall.

12 Q So your work there was limited to managing a
13 group of collectors which would call consumers to
14 collect on these account receivables, or write
15 consumers; is that correct?

16 A That's correct.

17 Q And is it your testimony that you don't
18 remember even approximately when your employment began
19 at OSI?

20 A I -- I don't recall the exact date when I
21 started there.

22 Q Do you have a recollection of how many years
23 you spent there?

24 A I spent about three years.

25 Q Did you have any other titles or positions

1 with OSI?

2 A No, I did not.

3 Q Prior to OSI, what was your employment,
4 please, sir?

5 A Commercial Credit.

6 Q Let me go back to OSI for just a second.
7 Where was your place of employment with OSI?

8 A Atlanta, Georgia.

9 Q Atlanta's a big city. Were you in one of
10 the suburbs or were you in Atlanta proper?

11 A I was in the Marietta location.

12 Q Out near the Air Force base?

13 A No, it was off of Windy Hill Road.

14 Q Almost to the Air Force base?

15 A Almost, not quite.

16 Q You mentioned Commercial Credit. Where was
17 your employment with Commercial Credit located?

18 A Tucker, Georgia.

19 Q And do you recall your period of employment
20 with them?

21 A Approximately four years.

22 Q Based upon my guesstimation, it appears that
23 you would've been employed there from approximately
24 1990 or '91 until approximately 1994. Does that sound
25 about right?

1 A Approximately.

2 Q And what is the business of Commercial
3 Credit at that time, please, sir, as best you recall?

4 A Consumer finance.

5 Q Would this be one of those storefront
6 operations where people walk in off the street and get
7 small loans for consumer goods, that sort of thing?

8 A Yes.

9 Q And were you actually in that portion of the
10 business at that time? Were you doing consumer
11 finance or were you in collections also there?

12 A You basically do consumer finance and
13 collections.

14 Q So that's, I guess, one of the early models
15 where you had people coming and making their weekly
16 payments of 28 bucks or whatever, and you're making
17 loans to them as they need and qualify for them, and
18 then if they're delinquent, you're picking up the
19 phone and calling people you've made loans to and say,
20 hey, why don't you come make a payment to me, that
21 sort of thing?

22 A Yes, that's right.

23 Q And is it safe to say that most of your
24 loans would've been for smaller amounts, under \$5,000,
25 that type of thing?

1 A Primarily.

2 Q Sure. Did you make mortgage loans from that
3 location at that time?

4 A Yes, we did.

5 Q Were those first or second loans?

6 A Second mortgages.

7 Q Did not engage in the business of making
8 first mortgages at all?

9 A No.

10 Q And how long -- well, you've already told me
11 that, so strike that. You worked there for about four
12 years?

13 A About four years.

14 Q Prior to Commercial Credit -- well, let me
15 back up and ask a couple more questions.

16 I'm assuming -- well, don't let me assume.
17 What position did you enter that business as?

18 A A manager.

19 Q Were you the manager in charge of that
20 branch or --

21 A Yes. Yes, I was.

22 Q Okay. Is that the first professional job
23 you had out of college?

24 A No, it was not.

25 Q Prior to Commercial Credit, where were you

1 employed?

2 A A company called Bomar Credit.

3 Q I'm sorry?

4 A Bomar, B-O-M-A-R.

5 Q One I haven't heard of. Were they also in
6 consumer finance?

7 A No, they were actually a third-party
8 collection company.

9 Q And where was your principal place of
10 employment with Bomar?

11 A Atlanta, Georgia. And it is Atlanta,
12 Georgia.

13 Q Okay. And what was your position with
14 Bomar?

15 A I was a collector.

16 Q And what were you primarily collecting at
17 Bomar?

18 A Small balances.

19 Q What type of accounts?

20 A Charged off credit cards.

21 Q Was Bomar bought out by someone?

22 A I don't -- I don't recall. I didn't spend
23 much time there.

24 Q How long were you with them?

25 A Six months.

1 Q I'm assuming that you held no position other
2 than collector?

3 A That's correct.

4 Q And with Commercial Credit, you held no
5 position other than manager?

6 A That's correct.

7 Q Did you have a job prior to Bomar Credit?

8 A Yes, I did.

9 Q Where was that?

10 A Household Finance Corporation.

11 Q Do you remember the term of your employment?

12 A Approximately six years.

13 Q So that would've been mid to late '80s; is
14 that fair?

15 A Yeah, it was -- I remember, because I
16 started out of college there, it was September of 1984
17 is when I started there.

18 Q And worked there till sometime in '89?

19 A Yes.

20 Q And that was your first position out of
21 college?

22 A Yes.

23 Q And what position were you hired into,
24 please, sir?

25 A As a branch representative.

1 Q Can you tell me what that job involved?

2 A Learning.

3 Q Trying to find your way to work in the
4 morning?

5 A Yeah, basically learning how to
6 lend/collect, primarily.

7 Q So somewhat of an apprenticeship-type
8 position?

9 A That would be correct.

10 Q And how long did you serve in that capacity?

11 A Oh, to be honest with you, I don't recall
12 how long I served in that capacity.

13 Q Was that, for lack of a better term, a
14 program where they brought you in, you served in that
15 capacity for a period of time, and then they advanced
16 you or said you will never cut it here and let you go?

17 A They would advance you, or if you weren't
18 doing the job, they would let you go, yes.

19 Q And so, obviously, you advanced since you
20 were there five years?

21 A Yeah, to an assistant manager.

22 Q Okay. At that time, was Household also more
23 or less a storefront type operation?

24 A Yes, they were.

25 Q So you would've went to work in an existing

1 facility with, I'm assuming, an experienced manager?

2 A Yes.

3 Q Okay. And where would that employment have
4 been located?

5 A That was in south DeKalb County, I believe
6 at the -- it was Decatur, Georgia.

7 Q And how long did you serve as assistant
8 manager, if you recall?

9 A Between the branch manager and -- or the
10 branch representative and assistant manager,
11 approximately two years.

12 Q All right. And after your assistant manager
13 position there, I'm assuming you received some other
14 sort of promotion?

15 A Yes, I was promoted, branch manager.

16 Q Were you sent to another store, or did you
17 stay in the Decatur, Georgia, area?

18 A No, I was sent to the Tucker, Georgia,
19 location.

20 Q Is it fair to say during this period of time
21 this type of business was expanding pretty rapidly,
22 opening new stores, that sort of thing?

23 A I don't recall.

24 Q Do you know if the Tucker store was a new
25 store that you took over?

1 A No, it was not.

2 Q All right. And how long were you branch
3 manager at Tucker?

4 A Approximately three and a half years, almost
5 four.

6 Q So is it fair to say you were there until
7 you left?

8 A Yes.

9 Q Okay. And you did mention that that was
10 your first job out of college. Where did you go to
11 college at?

12 A Valdosta State College.

13 Q Folks that go to Valdosta State usually only
14 go because they play some sport or they live nearby;
15 what was it for you?

16 A I went down there to play baseball.

17 Q All right. Did you grow up in Georgia?

18 A I grew up all over.

19 Q Okay. So you were there all four years, I
20 assume?

21 A Yes.

22 Q And you have a bachelor's degree?

23 A No, I do not.

24 Q Did you complete a degree from Valdosta
25 State?

1 A Associate's.

2 Q And what is that degree in?

3 A Finance.

4 Q Do you have any other college degrees?

5 A No, I do not.

6 Q Where did you graduate from high school
7 from?

8 A Milton High School, Alpharetta, Georgia.

9 Q With respect to Option One, where was your
10 employment principally located?

11 A Jacksonville, Florida.

12 Q And where in Jacksonville was Option One's
13 building located?

14 A I -- I don't recall the exact address. I
15 believe it was Touchton Road.

16 Q You indicated with respect to Option One
17 that you were an assistant vice president for loss
18 mitigation, foreclosure and bankruptcy, correct?

19 A Yes.

20 Q Was all that work handled in-house at that
21 time?

22 A Loss mitigation, foreclosure and bankruptcy,
23 we utilized Fidelity for two states, about half the
24 work, for the last two months that I was there.

25 Q Is your testimony that Fidelity only had the

1 foreclosure and bankruptcy business of Option One for
2 the last two months that you were there?

3 A Yes, it is.

4 Q Did Option One use the MSP software platform
5 at that time?

6 A Yes, they did.

7 Q Did Ocwen use MSP?

8 A No, they did not.

9 Q What did they use?

10 A It was an in-house product.

11 Q Did you ever work in foreclosure and
12 bankruptcy at Ocwen?

13 A No, I did not.

14 Q Do you know anyone or have any relatives by
15 blood or marriage who live in DeKalb County, Alabama?

16 A No, sir.

17 Q Do you have any friends or acquaintances in
18 DeKalb County, Alabama?

19 A No, sir.

20 Q Have you ever been to DeKalb County,
21 Alabama?

22 A No, sir.

23 Q So then we can agree that your entire
24 professional life has been involved in finance or
25 collections?

1 A That is correct.

2 (Plaintiffs' Exhibit No. 1 marked for
3 identification.)

4 Q Let me show you what I've previously marked
5 as Plaintiffs' Exhibit 1. I will represent to you
6 that that is a copy of a Plaintiffs' 30(b)(6) notice
7 for today which was filed with the court system in the
8 State of Alabama for DeKalb County. Ask you to take a
9 look at that document. Excuse me.

10 Have you reviewed that document prior to
11 coming to this deposition today?

12 A Yes, I have.

13 Q Are there any documents that you have
14 available today that are included in that deposition
15 notice that you have not previously produced?

16 MR. CASH: Yeah, this is Mike Cash, I'm the
17 attorney for Fidelity. There are a number of
18 categories that requested documents which are
19 either documents that don't exist or the
20 definition is inaccurate. What we've done is
21 gone back and pulled all documents associated --
22 that Fidelity has that are associated with this
23 file, and I'm producing those now to plaintiffs'
24 counsel.

25 MR. WOOTEN: Now, have these documents been

1 previously Bates stamped or marked in any way?

2 MR. CASH: They have not. And what we
3 probably want to do is go ahead and produce them
4 and have the reporter make Bates stamp copies
5 and -- and then we'll get them with copies of the
6 deposition, if that's acceptable.

7 MR. WOOTEN: Going to be lots of copies with
8 this deposition.

9 BY MR. WOOTEN:

10 Q Is it your testimony that these are all of
11 Fidelity's documents with respect to this loan?

12 MR. CASH: Again, my statement is those are
13 all the documents which would've been responsive
14 to the request with respect to this loan.

15 MR. WOOTEN: Okay.

16 BY MR. WOOTEN:

17 Q Let me see that document, if you will,
18 please, sir. Because I didn't make copies of it. I'm
19 working off of this.

20 What is a MSP P309 form, Mr. Newland?

21 A I don't know.

22 Q Is it fair to say that an MSP P309 form is
23 actually a data archive which shows each time that
24 Fidelity or a user of MSP changes any data with
25 respect to any loan?

1 A I -- I don't recall.

2 Q And it's your testimony that you previously
3 reviewed my deposition notice, correct?

4 A Uh-huh.

5 Q You are the first vice president of
6 operations of Fidelity, correct?

7 A That is correct.

8 Q LPS, I'm sorry. Is it your testimony that
9 you don't know what a P309 form is?

10 A No, I do not.

11 Q Do you know what a P309 screen is?

12 A I've seen the screen, but I don't know what
13 it entails.

14 (Plaintiffs' Exhibit No. 9 marked for
15 identification.)

16 Q Okay. Let me show you a document I
17 previously marked as Plaintiffs' Exhibit 9, and I'll
18 represent to you that that is a copy of a web page
19 from LPS's training software with respect to MSP.
20 Does that appear to be a web-based training document
21 from your MSP software, Mr. Newland?

22 A From LPS software?

23 Q Uh-huh.

24 A Looks to be, yes.

25 Q Okay. And does that indicate a P309 screen?

1 A Yes, it indicates as far as approximately
2 what a P309 screen is, yes.

3 Q Okay. Does it explain what a P309 is, what
4 information's available from a P309 --

5 A Yes, it does.

6 Q -- screen?

7 Okay. What information is available
8 according to that document from a P309 screen?

9 A Are you asking for me to read the -- what's
10 over here on the right side?

11 Q Well, we can start with that.

12 A Sure. P309 provides loan activity detail;
13 past activity which equals history; files storing
14 history and equals history of files; history initiated
15 at the loan boarding, new loan setup or acquisition
16 and merger; transactions generate details.

17 Q I'm going to ask you again, Mr. Newland,
18 does that document indicate that a P309 form will give
19 you the history of all the data transactions and the
20 changes that have been made with respect to your MSP
21 software for any given loan?

22 MR. CASH: Object to the form of the
23 question and the term "your". We're here for
24 Fidelity, for the defendant in this case, which
25 is Fidelity Foreclosure & Bankruptcy Solutions.

1 MR. WOOTEN: Okay.

2 MR. CASH: To the extent it's a different
3 entity, I'm going to -- we're going to have to be
4 a little more specific on the term "your"
5 software.

6 MR. WOOTEN: Well, Mr. Cash, your defendant
7 runs MSP software.

8 MR. CASH: Actually, Mr. Wooten --

9 MR. WOOTEN: It's owned by the parent
10 company.

11 MR. CASH: -- you're misinformed. You're
12 misinformed. So you -- I'm going to ask that you
13 not testify. If you want to ask him questions,
14 that's fine, but if that's the basis you're
15 asking these questions on, you are misinformed.

16 MR. WOOTEN: Okay. Well, we're going to ask
17 him these questions, Mr. Cash.

18 MR. CASH: Feel free. But we're going to
19 have to make it specific.

20 MR. WOOTEN: Well, that'll be fine --

21 MR. CASH: So when you say your --

22 MR. WOOTEN: -- we'll do that.

23 MR. CASH: We're here as a 30(b)(6)
24 representative of this defendant, not affiliates
25 of this company.

1 MR. WOOTEN: And I'm going to ask you not to
2 make speaking objections and not to direct him
3 how to testify by your objections.

4 MR. CASH: I'm not going to do that, but I'm
5 going to -- my objection -- my only objection
6 was: Objection, "your" is not specific. You
7 went into the speaking, and I responded so you
8 can understand what my objection is.

9 MR. WOOTEN: Sure. And that's fine.

10 MR. CASH: So, I object to the use of the
11 term "your." That was my objection and it's not
12 a speaking objection.

13 BY MR. WOOTEN:

14 Q Well, let me ask you this, Mr. Newland,
15 isn't it a fact, sir, that the client that you are
16 here -- the defendant that you're here as a corporate
17 rep of, Fidelity National Foreclosure Services, or
18 LPS, uses MSP, the software platform, for its work?

19 A Our client uses this and we do have the
20 ability to access their system, yes.

21 Q That is correct, you do have the ability to
22 access their system, right?

23 A That's correct.

24 Q And, in fact, you had the ability to enter
25 the data fields in their system and make changes,

1 don't you?

2 A I don't know the answer to that question.

3 Q You are the person in charge of LPS; is that
4 fair to say?

5 A No, it's not.

6 Q Okay. Are you in charge of the day-to-day
7 operations?

8 A I run a portion of the day-to-day
9 operations.

10 Q Okay. Is it your testimony today,
11 Mr. Newland, that you are unfamiliar with whether or
12 not employees who work for you can enter client data
13 fields and alter that data and make changes to that
14 data through their access through MSP?

15 A They can make changes to certain portions of
16 the client's system, but specifically, I don't know
17 what portions those are.

18 Q And isn't it true, Mr. Newland, that a P309
19 form will indicate all the data changes that have been
20 made on any given loan?

21 A That's what it states in this screen shot,
22 yes.

23 Q And isn't it true, Mr. Newland, that you can
24 walk out to any computer that is currently locked out
25 of MSP and use your log-in and access the P309 field

1 and print all the forms associated with that field
2 with a simple push of a button?

3 A I don't recall.

4 Q I would assume with your seniority that you
5 have certain rights to access documents and data
6 commensurate with your seniority; is that correct?

7 A No, it's not.

8 Q Oh. So who at LPS would have that
9 information as to who could enter MSP and print off a
10 P309 form?

11 A I don't recall.

12 Q So before we get too deep into this, I want
13 to back up just a little bit. Please tell the Court
14 and whoever else might view this testimony exactly
15 what MSP is.

16 A MSP is a mortgage service platform.

17 Q It's a software system, isn't it?

18 A I don't know whether it's a software system
19 or not.

20 Q With respect to a mortgage transaction, sir,
21 is it true that MSP basically handles a loan file from
22 origination to the termination of the loan either by
23 payoff or foreclosure once it's in the MSP system,
24 assuming that it remains on the system with Fidelity
25 partners?

1 A I don't know.

2 Q Okay. With respect to the MSP software,
3 isn't it true, sir, that there are different modules
4 with respect to that software?

5 A That I don't know either.

6 Q Tell me what particular portions of the MSP
7 system the employees who work for you at LPS have
8 access to, please, sir.

9 A I do not know off the top of my head.

10 Q Who is the person who you either work for or
11 who works for you who would know that information,
12 please, sir?

13 A That would probably be our securities
14 department.

15 Q Okay. Your securities department?

16 A Uh-huh, security department.

17 Q So that would be your information technology
18 security department?

19 A Yes.

20 Q So you're telling me that there are no other
21 employees in your direct supervision line, either
22 above or below you, who can tell me what the various
23 modules of MSP are?

24 A Not -- well, not in my direct supervision,
25 no.

1 Q And you cannot tell me what modules of that
2 software your employees who work for you at LPS can
3 access, can you?

4 A No.

5 Q So you don't know whether somebody who's an
6 entry level employee who's just received their
7 clearance can go into the MSP software and print off
8 all the P309 forms or not, do you?

9 A I do not know specifically what screens
10 they're available to go to.

11 Q Okay. Now, you've had this deposition
12 notice for a period of time, haven't you, sir?

13 A Yes.

14 Q It's dated the 4th day of June of 2009,
15 isn't it?

16 A Yes, it is.

17 Q And I'm assuming, as you said, you had
18 reviewed this prior to coming here this morning,
19 right?

20 A Yes.

21 Q And being that it was the first topic on
22 which examination was requested, I'm assuming that you
23 asked someone what a P309 form was if you didn't know?

24 A Well, you said P309 forms. I do not know
25 what an MSP P309 form is.

1 Q Okay. MSP is your software, is it not?

2 A It's not my software.

3 Q It's Fidelity's software, is it not?

4 MR. CASH: Again, objection. Unless we're
5 defining Fidelity as Fidelity National
6 Foreclosure & Bankruptcy Solutions. Given that
7 definition, you can answer.

8 BY MR. WOOTEN:

9 Q Let me be clear. I'm going to refer to your
10 entity as LPS from now on, so we can be real distinct
11 about what we're saying. Is it your testimony that
12 LPS does not use MSP in its operations?

13 A No, LPS does utilize some of MSP, yes.

14 Q Okay.

15 A For different clients.

16 Q And MSP is a loan product of -- or a
17 servicing platform which is owned by LPS's parent
18 company; is it not?

19 A That would be correct.

20 Q And we're in the parent company building
21 this morning, right?

22 A That is correct.

23 Q And I've shown you Exhibit 9 and you've read
24 what this form says, correct?

25 A Uh-huh.

1 Q And is it your testimony that you did not
2 inquire as to what a P309 -- you didn't do any inquiry
3 at all into that?

4 A That's correct.

5 Q Okay. So it's your testimony that because
6 it said MSP P309 form, that you did no inquiry
7 whatsoever into that area of examination?

8 A That's correct.

9 Q And the next sentence of that line of
10 inquiry said: This should include all history files
11 archived on your system, whether they are delineated
12 as history, past activity or file storing history. Is
13 that correct?

14 A Yes.

15 Q And is it your testimony that you cannot go
16 onto any loan on which LPS is active and find the
17 history, the past activity, or the file storing
18 history?

19 A I don't know. Based off of this information
20 that you provided me, yes, it stipulates in this that
21 we can do that.

22 Q Okay. And I'm asking you, did you make any
23 inquiry, beyond the first sentence of that area of
24 examination, into whether or not you could provide me
25 the history files on your system with respect to my

1 client's loan, whether they were delineated as
2 history, past activity, or file storing history?

3 A No.

4 Q So you made no inquiry whatsoever?

5 A No, I did not.

6 Q Okay. And isn't it a fact, sir, that you or
7 someone under your control could log into their work
8 station and print you off whatever documents are there
9 as history, past activity, or file storing history
10 with a simple push of a button?

11 A That is correct.

12 Q And it would take less than ten minutes to
13 do so, wouldn't it?

14 A I don't know.

15 Q It would simply be a matter of entering my
16 client's loan information and going to that field and
17 pressing print, wouldn't it?

18 A I don't know.

19 Q Would you be surprised if other people
20 testifying about your software system -- or not your
21 software system, but Fidelity's software system, said
22 that any information in any field could be printed
23 with the press of a button?

24 A I'm sure they may say that.

25 Q Is your employment principally located in

1 Jacksonville, Florida?

2 A Yes, it is.

3 Q Do you have employees in this very building
4 where we sit who would have access to that
5 information?

6 A I do not have employees in this building.

7 Q Do you have employees in this compound?

8 A Yes, I do.

9 Q Okay. Because there are about, what -- how
10 many buildings are in the compound?

11 A Five.

12 Q Okay. So you have employees who work
13 directly for you who could easily gather this
14 information in a matter of moments, right?

15 A I don't know whether it's a matter of
16 moments or not.

17 Q Well, it's 10:00 local time, and I can go
18 ahead and represent to you we're going to be here for
19 a while. Do you want to take a break now and find an
20 employee and ask them if they can access that
21 information?

22 A No, that's okay.

23 MR. CASH: No, we're here ready to testify.

24 We'll testify to what we're here with.

25 BY MR. WOOTEN:

1 Q The next thing that I asked you for with
2 respect to this deposition are: All correspondence,
3 images, documents, notes or communications, in
4 whatever form and by whatever medium contained in the
5 client services notes of the Fidelity software for the
6 subject loan. As well as, if not previously provided,
7 a definitional code sheet for any codes used to
8 explain or describe this data.

9 MR. CASH: If we're going to go through
10 these one at a time, we would lodge an objection
11 to this request, that it's overly broad, it's
12 unclear, it's vague. There is no definition as
13 to, quote, Fidelity software. There is no
14 definition as to the term, quote, Fidelity.
15 There is no definition of what client services
16 notes are. Based upon those objections, there
17 are no documents that are responsive to this
18 specific request. However, and in trying to
19 interpret the vague request, we have provided all
20 notes regarding this loan, which are one of the
21 first exhibits.

22 MR. WOOTEN: Mr. Cash, I just want to
23 clarify something. You have not appeared of
24 counsel in this lawsuit in DeKalb County,
25 Alabama, have you?

1 MR. CASH: Yes, I have. And I have -- my
2 pro hac vice has been granted.

3 MR. WOOTEN: And you have local counsel
4 who's also involved in this lawsuit, correct?

5 MR. CASH: That is correct.

6 MR. WOOTEN: And that's the firm of Huie
7 Fernambucq in Birmingham, Alabama?

8 MR. CASH: I believe that's correct.

9 MR. WOOTEN: Did anyone acting on behalf of
10 your client file any objections to this 30(b)(6)
11 deposition notice?

12 MR. CASH: We're making our objections on
13 the record as to the specific document requests,
14 which we received within about the past ten days.

15 MR. WOOTEN: Okay. Today is June the 16th,
16 correct?

17 MR. CASH: That is correct. This was filed
18 on the 4th. And I received it on about the 6th
19 or the 7th. So within less than ten days. And
20 I'm making my objections on the record.

21 MR. WOOTEN: I'm aware that you're making
22 your objection on the record. My question is,
23 did anybody make a filed written objection to the
24 areas of inquiry in this 30(b)(6) notice?

25 MR. CASH: Not as far as I know.

1 MR. WOOTEN: Did you direct anyone on your
2 behalf or on your client's behalf to file an
3 objection in court with respect to this
4 deposition notice?

5 MR. CASH: Nick, I'm not the one being
6 deposed here, so I will make my objections on the
7 record.

8 MR. WOOTEN: Okay. I'm just --

9 MR. CASH: And the record speaks for itself.

10 MR. WOOTEN: -- making my record also, Mr.
11 Cash, so I'm just asking you, did you direct
12 anyone --

13 MR. CASH: And I'm not answering your
14 questions, Nick. I'm not being deposed here. I
15 will state my objections on the record, as I'm
16 entitled to do.

17 MR. WOOTEN: And I just want to make sure I
18 understand something, because I just want to be
19 real clear about this. Your testimony is --

20 MR. CASH: It's not my testimony, I'm going
21 to tell you again.

22 MR. WOOTEN: Your offering is --

23 MR. CASH: I'm not under oath here and I'm
24 not testifying. I've been clear on the record
25 and I will make my record. So if you have more

1 questions of the witness, feel free to ask him,
2 and I'll make my objections as we go.

3 BY MR. WOOTEN:

4 Q Here's my question. Mr. Newland, take all
5 the time you need and look at those documents, and I
6 want this answer from you. I want you to tell me
7 under oath, sir, that that's all the documents on your
8 client's system with respect to this loan.

9 MR. CASH: I'm going to object to the form
10 of the question. That's not what was indicated
11 previously. What was indicated previously is
12 it's all documents which were responsive to
13 non-objectionable questions in the 30(b)(6). We
14 will state our objections on the record one by
15 one, if we need to go through them, but these are
16 all of the notes back and forth and these are the
17 documents which are on the Fidelity, as we
18 defined that in the beginning of this, not on any
19 affiliate or parent, on the Fidelity system,
20 which was asked for.

21 MR. WOOTEN: Okay. You're defining Fidelity
22 as LPS.

23 MR. CASH: No. I'm defining Fidelity as
24 they are in the lawsuit. Fidelity is, and the
25 30(b)(6) is too, defendant, Fidelity National

1 Foreclosure & Bankruptcy Solutions, period.
2 There is no other Fidelity defendant in this
3 case. That is Fidelity for the purposes of this
4 case. And that is all that Fidelity is for the
5 purpose of this case.

6 BY MR. WOOTEN:

7 Q Okay. Mr. Newland, Fidelity National
8 Foreclosure & Bankruptcy Solutions is now known as
9 what?

10 A Lender Processing Solutions.

11 Q Okay. And when did that name change take
12 place?

13 A LPS -- well, it's LPS Default Solutions.

14 Q And when did that take place, sir? When was
15 that name change?

16 A I want to say it was March or February of
17 this year.

18 Q Okay. So as Fidelity National Foreclosure &
19 Bankruptcy Solutions is known today, they would not be
20 known as Fidelity, they would be known as LPS or
21 Lender Processing Solutions, right?

22 A LPS Default Solutions.

23 Q Okay. So I'm going to ask you, Mr. Newland,
24 this question. Is it your testimony that the
25 documents which your counsel has handed to me today

1 are all of the documents with respect to my client's
2 loans which are available or may easily be accessed
3 through use of the software known as MSP, which is
4 owned by your parent company, Fidelity, with respect
5 to my client's loan?

6 MR. CASH: Object to the form of the
7 question. It's beyond the scope of the 30(b)(6).
8 If you know the answer to that, you can answer
9 it.

10 THE WITNESS: I don't know.

11 BY MR. WOOTEN:

12 Q Who's the person who is in your employ who
13 has the most knowledge about what documents, images,
14 notes, and information are available through the MSP
15 software which LPS employs?

16 A I don't know off the top of my head, sir.

17 Q Do you have a manager of technology or a
18 vice president of technology?

19 A Yes, we do.

20 Q And that's with LPS?

21 A Yes.

22 Q And they are in this compound that we're
23 here at today?

24 A I don't know whether they're in this
25 compound or up in our Minnesota location.

1 Q And --

2 THE VIDEOGRAPHER: Excuse me. I'm sorry,
3 can I take a moment to change tape?

4 MR. WOOTEN: Certainly.

5 THE VIDEOGRAPHER: Off record at 10:07.

6 (Off the record discussion.)

7 THE VIDEOGRAPHER: Going back on record at
8 10:10, beginning of Videotape No. 2.

9 BY MR. WOOTEN:

10 Q The next area of inquiry that we delineated
11 in our 30(b)(6), Mr. Newland, was: Testimony and
12 documents regarding all correspondence, images,
13 documents, notes or communications, in whatever form
14 and by whatever medium contained in the foreclosure
15 notes of the Fidelity software for the subject loan.
16 As well as a definitional code sheet for any codes
17 used to explain or describe this data.

18 Now, we've established that Fidelity
19 software means MSP. I'm assuming that LPS only uses
20 MSP; is that correct?

21 A No, that's not correct.

22 Q What other software platforms does LPS use
23 other than MSP, please, sir?

24 A We have Fiserv that we utilize for -- I
25 mean, all clients are different as far as different

1 mortgage services software.

2 Q Let me stop you, because I hear what you're
3 saying, you're talking about some other issues. I'm
4 talking about with respect to the foreclosure work
5 that LPS does, are there any other software platform
6 that your employees at LPS utilize other than your
7 parent company software, MSP?

8 A Yes, there other -- there is other platforms
9 that we utilize.

10 Q Okay. Tell me the names of each of those
11 other platforms, please, sir.

12 A For different clients, we utilize our
13 updated Fiserv MortgageServ.

14 Q Let me just -- slow down just a second for
15 me. Fiserv, F-I-S-E-R-V?

16 A I believe.

17 Q And what exactly does that software do,
18 please, sir?

19 A It's known as -- well, it's basically a
20 mortgage servicing platform, if that's what you're
21 asking, if we update other mortgaging servicing
22 platforms, yes, we do.

23 Q What do you do with Fiserv?

24 A We just update different screens.

25 Q You update different screens?

1 A Uh-huh.

2 Q Is that a vehicle by which you provide data
3 to your clients?

4 A Yes.

5 Q Tell me what screens you are aware of Fiserv
6 updates.

7 A I do not know.

8 Q Who in your employ would be the person with
9 the most knowledge about that?

10 A Probably our securities area.

11 Q Who is that person?

12 A I don't know off the top of my head.

13 Q Would Fiserv also be the vehicle by which
14 your firm delivered bills to its customers?

15 A No.

16 Q Is Fiserv the vehicle by which your company
17 would add fee charges to customer accounts?

18 A We do not add --

19 MR. CASH: Objection to the form.

20 Q You can answer if you know.

21 A We do not add fees.

22 Q Okay. When LPS provides services to its
23 clients, does it charge fees?

24 A No.

25 Q I'm sorry?

1 A To our clients, no.

2 Q Okay. Let me ask it another way. When you
3 provide services to the mortgage servicers which hire
4 you to do foreclosure work, do you charge fees for
5 that work?

6 A No, we don't.

7 Q Okay. Tell me what you charge, how you get
8 paid for the work that you do, please, sir.

9 MR. CASH: I'm going to object to that
10 question. That's proprietary, and there's no
11 reason to go into it based upon the allegations
12 set forth in this lawsuit. There's no relevance
13 based upon any claim being made in this lawsuit.
14 Unless, Nick, you can point me to one of the
15 allegations in here that supports that question.

16 MR. WOOTEN: Well, let's do this, Mr. Cash.
17 We'll come back to that question in a few
18 minutes. I don't want to get too far out of
19 order.

20 MR. CASH: Okay. The objection will be the
21 same later, but --

22 MR. WOOTEN: That'll be fine. You'll be
23 welcome to make it.

24 BY MR. WOOTEN:

25 Q Make sure I understand this, Mr. Newland.

1 LPS have contracts with the attorneys who provide
2 services with respect to foreclosures and bankruptcies
3 who are partners of LPS?

4 A Yes.

5 Q And do those contracts set forth the fees
6 which those attorneys will charge for standard
7 services?

8 A No.

9 Q Do those contracts provide for the payment
10 of a referral fee from those attorneys to LPS?

11 A No.

12 Q Does LPS have contracts with those mortgage
13 servicers for which it provides default services?

14 A Yes.

15 Q How many mortgage servicers does LPS provide
16 default services for, please, sir?

17 A Approximately 34.

18 Q And 34 servicers, what percentage of the
19 mortgage servicers existing in America today is
20 represented by that 34?

21 MR. CASH: Objection. That's not relevant.
22 You don't have to answer it. Unless you can show
23 me how that's supported in any way by your
24 complaint in this case, Nick.

25 MR. WOOTEN: Mr. Cash --

1 MR. CASH: Yes, sir.

2 MR. WOOTEN: -- are the rules with respect
3 to deposition question objections different in
4 Texas than they are in Alabama?

5 MR. CASH: Not materially. So, for
6 something to be discoverable, it must be relevant
7 or it must be reasonably likely to lead -- and it
8 must be reasonably likely to lead to discovery of
9 admissible evidence. So the first threshold is
10 relevance. If something is irrelevant --

11 MR. WOOTEN: So I just want to make sure,
12 you're making a legal ruling --

13 MR. CASH: I just want to make sure that I
14 get it on the record.

15 MR. WOOTEN: -- with respect to whether or
16 not your client can answer a deposition question.

17 MR. CASH: No, sir, I'm not making a legal
18 ruling. What I'm saying is that the question
19 you're asking is not relevant, and I'm not going
20 to let you go on a fishing expedition, because
21 it's harassing and it's not relevant to any issue
22 in this case.

23 If you will point out to me any way in which
24 it is relevant based upon the complaint on file,
25 I may withdraw or reconsider the objection.

1 That's what I'm saying.

2 MR. WOOTEN: So what I want to make clear
3 is, is that we've all traveled to Jacksonville,
4 Florida, to take this deposition.

5 MR. CASH: Yes, sir, we have.

6 MR. WOOTEN: And you're making an objection
7 and specifically instructing your witness not to
8 answer the question rather than making your
9 objection and allowing him to answer the question
10 and preserving the issue for the Court.

11 MR. CASH: What I am saying is, that we are
12 not going to go far afield and do a fishing
13 expedition here. I am more than happy to call
14 the Court, if you want to do that. If you want
15 to call the Court and get guidance ahead of
16 time --

17 MR. WOOTEN: Sure, why don't you run out
18 there and call the Court, that'll be fine. We'll
19 keep taking the deposition.

20 MR. CASH: They're your questions. If you
21 would like the Court to get involved, I'm happy
22 to do so.

23 MR. WOOTEN: No, I just want to make sure we
24 have a record, that you are here and you're
25 telling your client not to answer. That's all I

1 want to make a record of.

2 MR. CASH: What I am telling my client to
3 do, and the record is very clear and you don't
4 have to repeat it, I'm telling my client not to
5 answer irrelevant fishing expedition questions.
6 And I'm also at the same time giving you every
7 opportunity to show me anywhere in your complaint
8 that makes that question relevant and I will
9 reconsider that instruction. You have declined
10 to do so.

11 MR. WOOTEN: I don't have to show you where
12 it's relevant. You have a right to object --

13 MR. CASH: Then --

14 MR. WOOTEN: -- he can answer and the Court
15 can rule whether the question is relevant or not
16 when we can go back in front of the Court.

17 MR. CASH: I also have the right to object.
18 And if I feel that it is harassment and it is far
19 afield, then I have the right to instruct him not
20 to answer under the Alabama rules and the federal
21 rules.

22 MR. WOOTEN: Well, that'll be fine, but the
23 next time we take this deposition it'll be in
24 DeKalb County, Alabama, it won't be in
25 Jacksonville. Okay?

1 MR. CASH: I didn't know you had that kind
2 of power.

3 MR. WOOTEN: Well, you just keep doing this
4 and you'll see.

5 MR. CASH: Well, I'm trying to -- Nick, if
6 you will ask questions that are supported by this
7 complaint --

8 MR. WOOTEN: I'm going to ask the
9 questions --

10 MR. CASH: -- I will absolutely sit here and
11 be quiet.

12 MR. WOOTEN: -- I want to ask, and you can
13 object to them.

14 MR. CASH: Well, see, therein lies the
15 problem --

16 MR. WOOTEN: And if you don't like them --

17 MR. CASH: -- you don't get to ask anything
18 and everything.

19 MR. WOOTEN: If you don't like the
20 questions, object to them and the Court can rule.

21 MR. CASH: I have. And I will tell my --

22 MR. WOOTEN: But to sit here and tell your
23 client not to answer questions --

24 MR. CASH: Here's what you don't get to do,
25 Nick, what you don't get to do is to go into this

1 entire fishing expedition that has nothing to do
2 with this lawsuit and gather all this information
3 and then later have the Court rule, well, all of
4 it was irrelevant, but it really doesn't matter
5 to you, because you've gone ahead and gathered it
6 for your purposes. We're not going to do that
7 here today.

8 MR. WOOTEN: You know what --

9 MR. CASH: And you know what, if we have to
10 come to DeKalb County and take the deposition
11 again, so be it, that is an expense that I will
12 incur.

13 MR. WOOTEN: Well, that'll be fine.

14 MR. CASH: All right, then. Why don't you
15 quit fussing at me and just ask your questions.

16 MR. WOOTEN: Well, why don't you quit
17 interfering with my deposition.

18 MR. CASH: I'm not interfering, I'm just
19 making my objections and making my instructions.
20 I haven't engaged you at all, Nick. I've just
21 made my objections for the record.

22 MR. WOOTEN: No, but you're instructing your
23 witness not to answer.

24 MR. CASH: I know what I'm doing, I'm not
25 engaging you, so why don't you --

1 MR. WOOTEN: That's fine.

2 MR. CASH: -- just pay attention to your
3 deposition and take it, and I'll do my job, you
4 do yours.

5 MR. WOOTEN: Okay. If you won't interfere
6 with my deposition, I'll --

7 MR. CASH: I'm not interfering with it,
8 brother, I'm just making objections to
9 objectionable questions. Stop asking
10 objectionable questions and we will sail along.
11 I didn't say a word for the first hour of this
12 deposition.

13 MR. WOOTEN: Yeah, well, we were talking
14 about where your client worked --

15 MR. CASH: Nothing objectionable.

16 MR. WOOTEN: -- before he got here.

17 MR. CASH: Nothing objectionable.

18 MR. WOOTEN: That's right.

19 MR. CASH: I don't object if it's not
20 objectionable, Nick.

21 MR. WOOTEN: You know what, I hope you enjoy
22 this veil of secrecy as long as you can, because
23 it ain't going to last.

24 MR. CASH: It's not a veil of secrecy, I'm
25 happy to tell you things that are relevant to

1 this lawsuit. But if you want to go fishing, you
2 ought to be in the Gulf, not in this conference
3 room.

4 BY MR. WOOTEN:

5 Q Mr. Newland, have you testified or been
6 requested to testify in front of a grand jury with
7 respect to the practices of LPS with regards to its
8 foreclosure and bankruptcy practices?

9 A No, I have not.

10 Q Are you aware of a pending federal
11 investigation by the United States Department of
12 Justice or the United States bankruptcy trustee office
13 regarding your business's foreclosure and bankruptcy
14 practices?

15 A No, I'm not.

16 Q So your testimony's that you have not
17 received any notification that there is an active
18 federal investigation of your company's practices?

19 A No.

20 MR. CASH: Objection to form. Go ahead.

21 THE WITNESS: No, I have not.

22 BY MR. WOOTEN:

23 Q Are you aware that there is an active
24 investigation by the State of Connecticut with regard
25 to similar issues?

1 A No, I'm not.

2 Q Have you been asked to testify or produce
3 any documents from your client with respect to these
4 issues?

5 A No, I have not.

6 Q And your testimony here today is, is that
7 you cannot tell me the person in your employ who can
8 tell me what exactly the data is that is provided to
9 your clients through the Fiserv software?

10 A No, I cannot.

11 Q Tell me each person who is directly
12 answerable to you on a day-to-day basis with respect
13 to management. Do you have vice presidents who work
14 for you?

15 A Yes, I do.

16 Q Okay. How many of them?

17 A I have two vice presidents that work for me.

18 Q Okay. And who are they, please, sir?

19 A Charles -- or, I'm sorry, Tara Engle.

20 Q Can you spell that for me, please, sir?

21 A T-A-R-A, last name Engle, E-N-G-L-E.

22 Q What is her title, please, sir?

23 A Vice president of special assets.

24 Q And does LPS have a definition of special
25 assets, please, sir?

1 A I believe I told you that earlier.

2 Q Okay. This -- what you mentioned earlier,
3 that was not with respect to a different client?

4 A No.

5 Q Or different employment?

6 A No.

7 Q Who is the other vice president who works
8 for you, please, sir?

9 A James Richards. Would you like me to spell
10 that?

11 Q I think I can handle that one, Mr. Newland.

12 A All right. Okay.

13 Q And what is his title, please, sir?

14 A He is vice president of special assets also.

15 Q And are both of those individuals who are in
16 your employ located here in Jacksonville?

17 A One is located here in Jacksonville and the
18 other one is located in West Palm Beach, work at home.

19 Q Okay. Are there any vice presidents who are
20 not directly answerable to you who also work in LPS,
21 either in this facility or in the Mendota Heights
22 facility?

23 A Are there any other vice presidents in
24 Lender Processing Services?

25 Q Who answer directly to you --

1 A No.

2 Q -- either here or in Mendota Heights,
3 Minnesota?

4 A No, not vice presidents.

5 Q Okay. What other persons answer directly to
6 you with respect to day-to-day activities of LPS?

7 A Can you clarify the question one more time,
8 please.

9 Q I'm assuming that you have a management team
10 of some sort that answers to you?

11 A Yes, I do.

12 Q Okay. On more or less a daily, weekly type
13 basis?

14 A Yes.

15 Q Okay. And I'm assuming that Tara Engle and
16 James Richards are not the only members of that
17 management team?

18 A No, there's two other members.

19 Q Who else is there?

20 A Charles Martisek.

21 Q I can handle, Charles, but will you try
22 Martisek --

23 A Sure.

24 Q -- for me?

25 A M-A-R-T-I-S-E-K.

1 Q And what is his title, please?

2 A Assistant vice president, attorney
3 management.

4 Q And what does his job involve?

5 A He basically manages our attorney network.

6 Q Okay.

7 A Or part of our attorney network.

8 Q What part does he manage?

9 A Basically the Court foreclosure steps, which
10 basically means provides a conduit for our clients'
11 communications with the attorneys.

12 Q Is that accomplished through a particular
13 portion of the software employed by LPS known as MSP?

14 A No.

15 Q Is it accomplished through some other
16 software portal which is employed by LPS?

17 A Yes.

18 Q And what is the name of that portal, please,
19 sir?

20 A Process Management.

21 Q And please tell me everything which Process
22 Management provides to your attorney network.

23 A Basically it's the communication work flow
24 process, in which we help manage the attorneys as far
25 as it goes, as far as the foreclosure or bankruptcy

1 action.

2 Q Is the Process Management system -- is
3 compliance with the Process Management system by your
4 attorney network the measure by which your attorney
5 network receives their APR rating with your company?

6 A Can you clarify that question again?

7 Q Sure. I understand that your Process
8 Management system sets forth guidelines or time lines
9 within which your attorneys must complete certain
10 actions; is that correct?

11 A That is correct.

12 Q Okay. And those guidelines are set forth by
13 Fidelity to your attorney members; is that correct?

14 A No, it's not correct.

15 Q Okay. Tell me how those guidelines are
16 determined please, sir.

17 A They are guidelines that are determined by
18 the clients.

19 Q And in this respect, who are the clients,
20 please, sir?

21 A Servicers.

22 Q Is it your testimony here today that
23 Fidelity does not set the guidelines within which
24 certain tasks must be accomplished by your attorney
25 network?

1 A No, we do not.

2 Q And you have 34 servicers who use your
3 network, correct?

4 A That is correct.

5 Q You have 34 --

6 A Approximately.

7 Q You have 34 different sets of guidelines?

8 A Yes, we do.

9 Q And 34 different sets of time lines, I
10 assume then?

11 A Not necessarily.

12 Q The time line aspect of this issue, is it
13 your testimony that Fidelity does not control that?

14 A That is correct.

15 Q Excuse me. Let me rephrase that. Is it
16 your testimony that LPS does not control the time line
17 process?

18 A That is correct.

19 Q Besides work flow management, what other
20 information is provided to your attorneys through the
21 Process Management?

22 A In what respect?

23 Q Work flow management, please explain to me
24 everything you understand the work flow management
25 portion of Process Management to entail.

1 A Basically what we do is, we provide the
2 mechanism as far as steps that need to be completed by
3 the attorneys in reference to the actions that they're
4 taking. If they need some type of information, we
5 have the ability for the attorneys to open up what is
6 called issues or processes to request those items, and
7 then we will go out and look for those items and/or
8 work with the clients in reference to obtaining that
9 information.

10 MR. CASH: Nick, for the record, all the
11 Process Management notes are this top group of
12 back and forth that have been produced.

13 MR. WOOTEN: These were previously produced.

14 MR. CASH: And those are on this loan on the
15 Process Management.

16 MR. WOOTEN: This is -- these are the
17 process notes, which is Page 1 of 25.

18 MR. CASH: Correct.

19 MR. WOOTEN: And I have those marked in
20 another exhibit.

21 MR. CASH: Okay.

22 MR. WOOTEN: I'm going to mark this
23 cumulatively, give me just a second, I'm going
24 to -- I'm not going to try to go back through and
25 pull that apart for us to look at it.

1 I'm going to mark what you produced today as
2 a cumulative exhibit, Plaintiffs' Exhibit 24.
3 And just again, so that it's on the record with
4 this marking, please tell me again for the record
5 exactly what that represents.

6 MR. CASH: These are documents that were
7 responsive to the request for documents served
8 with the 30(b)(6). They are the documents that,
9 subject to the objections that we made and will
10 continue to make as specific issues are directed,
11 that we could ascertain were responsive to that
12 request, to those requests.

13 MR. WOOTEN: Fine. I'm going to leave that
14 sitting right there.

15 And I apologize, Madam Court Reporter, for
16 marking this stuff out of order. I didn't intend
17 to do it that way.

18 (Plaintiffs' Exhibit No. 24 marked for
19 identification.)

20 Q Issues. If an attorney is trying to
21 foreclose on a house and he says, hmm, LPS, these
22 folks say they paid this loan off with the insurance
23 proceeds, that would come up as an issue, right?

24 A Yes, it would.

25 Q So your lawyer out in the world, in this

1 case, Birmingham, if they were told by my client's
2 lawyer or other lawyer that they paid the loan off
3 with insurance proceeds, he would come back and he
4 would create an issue and say, oh, by the way, this
5 loan is supposed to be paid off, tell me what I'm
6 supposed to do, right?

7 A That is correct.

8 Q And then who would respond to that issue?

9 A Somebody based off of the issue would
10 respond accordingly, whatever the issue would be. In
11 this case, probably be an insurance claim issue that
12 would be raised, and which at that time, we would
13 provide that information over to the client.

14 Q All right. And so, your testimony is, is
15 that LPS would then receive the issue from the
16 attorney and then relay the issue to, in this case,
17 Option One?

18 A That would be correct.

19 Q And LPS would not take any initiative to
20 make any decision, they would simply wait on Option
21 One to tell them what to tell the attorney?

22 A That is correct.

23 Q Other than Process Management, are there any
24 other software or software modules or devices which
25 are used to communicate with your attorney network?

1 A Not software, no.

2 Q In what other ways do you communicate with
3 your attorney network?

4 A Primarily through the Process Management
5 system.

6 Q Okay. What is NewTrak?

7 A Process Management.

8 Q Is that also called FIS Desktop now?

9 A No, it's not.

10 Q Is there another term for NewTrak other than
11 NewTrak?

12 A Process Management.

13 Q Is it safe to say that what I refer to as
14 NewTrak is basically a sectioned off or separate
15 portion of software that deals strictly with
16 communications between LPS and the attorneys?

17 A No.

18 Q Other than the attorneys and the LPS
19 employees, who else accesses Process Management?

20 A Our clients, servicers.

21 Q Okay. So whatever information is in the
22 Process Management system is accessed by any user of
23 the servicer, as well as any employee of LPS assigned
24 to work on the loan, as well as the attorney and
25 anybody designated by the attorney to use that

1 software?

2 A That would be correct.

3 Q What is New Image?

4 A New Image is an imaging platform.

5 Q Does LPS still refer to New Image by that
6 name?

7 A Does -- can you clarify the question one
8 more time?

9 Q Has New Image been renamed as part of the
10 LPS spinoff?

11 A Yes, it has.

12 Q What is it now referred to as?

13 A Document Management.

14 Q Is there an iteration of Document Management
15 that you're operating out of now?

16 A Yes.

17 Q What is that?

18 A I don't recall what the name is.

19 Q What is your understanding of Document
20 Management, what does it do?

21 A Document Management is just part of the
22 system that we go in and review documents that are
23 imaged.

24 Q I'm sorry, what documents?

25 A What documents?

1 Q You said you --

2 MR. CASH: He didn't hear the end of your
3 sentence.

4 Q I'm sorry.

5 A Oh. Just -- it's the platform that we
6 utilize to view documents associated with the loans.

7 Q Are there any word processing functions
8 within Document Management?

9 A Not that I know of.

10 Q Is Document Management also a platform by
11 which documents are provided to both attorneys who are
12 part of your network and clients?

13 A Yes.

14 Q And isn't it true that each time a document
15 is uploaded into MSP, there is a record made of what
16 the document's identity is and when it was uploaded?

17 A I don't know that.

18 Q If the documents you have produced indicate
19 that, you would not dispute it, would you?

20 A I don't know.

21 Q Would Mr. Martisek be a person more
22 knowledgeable about what is involved with Document
23 Management and what its capacities and capabilities
24 are than you, Mr. Newland?

25 A I don't believe so.

1 Q So, again, is it your testimony that someone
2 in security would be the person to talk to about that?

3 A I don't know that answer.

4 Q Is it possible that someone on the floor
5 interacting with files on a daily basis would know
6 more about what the Document Management capacities and
7 abilities are than you do as you sit here today?

8 A I don't know.

9 Q Have you made any inquiry?

10 A No, I have not.

11 Q Are you familiar with whether or not there
12 is a section of the software which LPS employs which
13 provides a list of all the images associated with a
14 loan account?

15 A What software?

16 Q MSP.

17 A No, I do not.

18 Q What about Document Management?

19 A Yes.

20 Q And there is a screen which sets forth every
21 document associated with a loan file; is that correct?

22 A That is correct in Document Management.

23 Q And it is a matter of simply going in and
24 selecting those documents to view them or to print
25 them, isn't it?

1 A Yes, we can print those documents.

2 Q Have you produced those documents with
3 respect to Larry David Wood and Karen Wilborn Wood's
4 loan today as part of your document that I've
5 marked --

6 A Yes, we have.

7 Q -- as Plaintiffs' Exhibit 24?

8 A Yes, we have.

9 Q Okay. So it's your testimony that every
10 document associated with this loan that is part of the
11 Document Management system has been produced as part
12 of what you brought today?

13 A Yes, it has.

14 Q Do you know if every document associated
15 with this loan was produced previously through written
16 discovery?

17 A I don't know the answer to that question.

18 Q If a member of an attorney network requests
19 an assignment of a mortgage for purposes of the
20 foreclosure, is that the type of document which would
21 be uploaded into Document Management and provided to
22 the attorney?

23 A Yes, it would.

24 Q If an attorney requests an affidavit in
25 support of a motion for relief from stay, is that the

1 type of document that would be executed and uploaded
2 into Document Management and provided to the attorney?

3 A Yes, it would.

4 Q Is it your understanding that those
5 documents contain information about when they were
6 created and by whom?

7 A Repeat that question again.

8 Q Is it your understanding that the
9 origination of that electronic data in the form of a
10 document file would contain the information about when
11 those documents were created or when those documents
12 were uploaded into the system?

13 A Yes, it would.

14 Q If an LPS employee executed an affidavit or
15 an assignment and uploaded it into Document
16 Management, that electronic document would contain the
17 information about what employee prepared that document
18 and when they prepared it, would it not?

19 A The upload would -- would state the time
20 stamp for that, yes.

21 Q And if that document which was uploaded by
22 the employee of LPS were received from some other
23 entity, it would also indicate that as well, wouldn't
24 it?

25 A Yes, it should.

1 Q So if an employee of Fidelity requested an
2 assignment of a mortgage from a servicer and the
3 servicer provided that document to the employee of
4 LPS, the electronic data would show when that took
5 place?

6 A Yes.

7 Q And it would show who was responsible for
8 obtaining or providing that mortgage assignment?

9 A It would basically track when the assignment
10 would go out for signature and when it would come back
11 and then transfer over to the attorney.

12 Q You said it would track when the document
13 went out for signature.

14 A Date and time stamp.

15 Q Okay. Explain that for me, please, sir.
16 You said it would go -- it would track when it went
17 out. Are you indicating that if an assignment was
18 requested, that an employee of LPS might prepare the
19 assignment and then send it to be signed?

20 A We don't -- we don't prepare the
21 assignments.

22 Q Okay. When you say it goes out, explain
23 what you mean.

24 A We funnel that either to the client or the
25 investor for signature.

1 Q Okay. So it's your testimony that employees
2 of LPS never sign mortgage assignments?

3 A I did not testify to that.

4 Q Mortgage assignment is requested by an
5 attorney for foreclosure or bankruptcy purposes. The
6 records in the Process Management notes would indicate
7 when that request was made, would it not?

8 A Yes, it would.

9 MR. CASH: Nick, I've already asked a lot of
10 these questions. Is there an allegation about
11 mortgage assignments in this case?

12 MR. WOOTEN: There is an issue with respect
13 to that, yes.

14 MR. CASH: Okay. I thought there was, I
15 just wanted to make sure, because I hadn't seen
16 it in the allegations.

17 BY MR. WOOTEN:

18 Q With respect to the request for the document
19 which would've been made by the attorney or the
20 client, there would be a concomitant entry in the LPS
21 system indicating that that request had been received,
22 right?

23 A That's correct.

24 Q And then there would be entries regarding
25 what action was taken to procure that document?

1 A That would be correct.

2 Q And then that document would then -- you
3 said it would be sent out for execution?

4 A Well, it depends -- depends on if we have
5 power of attorney from, or corporate resolution from
6 the client based off of the entity involved.

7 Q That's interesting that you mention that.
8 Your employees at LPS and part of your process is that
9 you seek to obtain these powers of attorney from your
10 various clients for just such an occasion as this,
11 correct, preparing documents for their foreclosure and
12 work?

13 A We don't -- we don't prepare the documents.

14 Q Or executing documents?

15 A If we have corporate resolution or power of
16 attorney, we can exercise the document.

17 Q And that would be based off of a form
18 provided by the client?

19 A That's correct.

20 Q Okay. It would not be based off of the data
21 provided to your LPS employees by the client?

22 A What do you mean by the data provided by the
23 client? I don't understand that question.

24 Q Okay. Let's say that in this particular
25 case that a particular securitized trust was supposed

1 to be the owner of this particular mortgage. Okay?

2 A Uh-huh.

3 Q And I think your position in this case is,
4 is Option One asked Mr. Humphrey to foreclose on this
5 property, correct?

6 MR. LAWLER: Objection. I don't want to get
7 into any kind of conversations between
8 Mr. Humphrey and Fidelity or Option One.

9 BY MR. WOOTEN:

10 Q Someone at some point requested Mr. Humphrey
11 foreclose on the Wood property, right?

12 A That would be correct.

13 Q And so if the mortgage were not assigned to
14 the specific securitized trust at that time, it would
15 have been necessary to obtain an assignment allowing
16 that securitized trust to foreclose, correct?

17 MR. CASH: Object to the extent it calls for
18 a legal conclusion. But if you know, you can
19 answer.

20 A I don't know.

21 Q Is it -- is it safe to say that your
22 understanding is that the only person who can
23 foreclose is the owner of the debt secured by the
24 mortgage?

25 A I don't know.

1 Q You've been in collection and finance your
2 whole professional career?

3 A That's correct.

4 Q And you are in charge of a company whose
5 business is to foreclose and manage bankruptcy and
6 foreclosure processes?

7 A That is correct.

8 Q And your testimony is, is that you do not
9 know generally who is entitled to foreclose?

10 A No.

11 Q Just wanted to be sure. Have you ever asked
12 anyone that kind of question?

13 A Yes.

14 Q And did they provide you any information?

15 A Different states have different...

16 Q Right. Like a deed -- a deed of trust
17 state, the trustee of the deed of trust has the right
18 to foreclose, right?

19 A I don't know.

20 Q So what you learned from your inquiry was
21 that different states have different rules?

22 A Yes.

23 Q Other than the Process Management and the
24 Document Management, how do you refer to those things
25 internally, do you call them platforms, modules? I

1 mean, how do y'all talk about those things? Do you
2 talk about them by name, what do you do?

3 A I'm not sure I understand your question.

4 Q Well, you say you had this Document
5 Management system and you've got this Process
6 Management system.

7 A Uh-huh.

8 Q Do you have names for those internally or do
9 you simply refer to it as Process Management, Document
10 Management?

11 A We refer to them as Process Management and
12 Document Management systems.

13 Q Then they're not considered to be products
14 or services offered by LPS to its clients in any way?

15 A No, it is offered to the clients.

16 Q Are there any other services or processes
17 that LPS provides, other than Document Management and
18 Process Management?

19 A We offer invoice management.

20 Q And what is the name of your invoice
21 management software?

22 A Invoice Management.

23 Q Simple enough.

24 MR. CASH: We're not creative. We don't
25 have any cool names.

1 MR. WOOTEN: Corporations generally aren't.

2 BY MR. WOOTEN:

3 Q With respect to Invoice Management, there is
4 also a screen within your software where you can go to
5 and review every invoice associated with any
6 particular loan file; is that correct?

7 A That's associated with that file, yes.

8 Q And so if a foreclosure attorney has
9 submitted a bill for fees, that would be available
10 through Invoice Management?

11 A If the client utilizes Invoice Management,
12 yes.

13 Q It's your testimony that some do and some do
14 not?

15 A Yes.

16 Q Okay. Invoice Management, does your
17 company, LPS, charge any fee for that service?

18 A To who?

19 Q To anyone who utilizes that service, be it
20 the servicer or the attorney network?

21 A Yes, there is a fee that is assessed to the
22 attorney network.

23 Q Tell me about that fee.

24 A I don't know what the fee is.

25 Q So if the foreclosing attorney provides a

1 bill through Invoice Management for \$500, Fidelity
2 then turns around and bills the attorney for using the
3 Invoice Management system; is that what happens?

4 A You'd have to ask somebody with our Invoice
5 Management department.

6 Q Okay. Who is that?

7 A Off the top of my head, I don't know.

8 Q Does LPS not have a person involved with
9 Invoice Management?

10 A Yes, we do.

11 Q Do you have a manager of that department?

12 A Yes, but I don't know who it is off the top
13 of my head.

14 MR. WOOTEN: Mike, can you find that out for
15 me, please.

16 MR. CASH: I'll find that out.

17 MR. WOOTEN: And I'm going to ask this, and
18 I know you're going to say you don't know, but
19 what I'm interested in is the person who is most
20 knowledgeable about how that system works with
21 respect to your -- both your attorney network and
22 your servicer clients. So if y'all will check on
23 that and let me know, I'd appreciate it.

24 BY MR. WOOTEN:

25 Q Is it your understanding that the servicers

1 do not pay any fees for use of Invoice Management?

2 A I don't know. I don't know that question.

3 Q If they utilize Invoice Management, would it
4 be part of their monthly billing rather than
5 separately billed?

6 A I don't understand. Monthly billed to who?

7 Q Do your servicers not pay a monthly fee for
8 the use of your services with respect to LPS?

9 A Which part of LPS?

10 Q Foreclosure or bankruptcy.

11 A I don't know.

12 Q What other part of LPS is there other than
13 foreclosure and bankruptcy?

14 A There is no other part for LPS Default
15 Solutions.

16 Q Okay. So you asked me what part of LPS I
17 was referring to, but you don't know with respect to
18 either one of them if the servicers pay a fee to use
19 that service?

20 A That's correct.

21 Q Do you have a contract with each of the
22 servicers who use your service?

23 A Yes, we do.

24 Q Is it safe to say that if they pay for your
25 services, that contract would set forth what and how

1 they pay you?

2 A I don't know.

3 Q Have you --

4 A I don't know whether it's in the contract or
5 not. I have not reviewed the contract.

6 Q So you wouldn't know if your contract said
7 pay it in Swiss cheese, you've just never seen one?

8 A No.

9 Q Let me ask this question. Who do you answer
10 to directly from your position?

11 A I answer to Scott Barnes.

12 Q And what is his title?

13 A President, Default -- LPS Default Solutions.

14 Q I just want to take a second to go back and
15 look at my notes. I just want to make sure I
16 understand.

17 You said you're the first vice president of
18 operations, right?

19 A That's correct.

20 Q And your responsibility is the day-to-day
21 operations of LPS?

22 A That's correct.

23 Q Is there anyone in LPS who holds a higher
24 title or position than Scott Barnes?

25 A For Default Solutions, no.

1 Q What other departments are there of LPS than
2 Default Solutions?

3 A There are a few other departments underneath
4 the LPS umbrella.

5 Q Do you know what those are?

6 A We have REO.

7 Q What else?

8 A Field Services.

9 Q And what else?

10 A We have a default title company.

11 Q What's the name of that company or is it --

12 A I don't know off the top of my head.

13 Q Any other --

14 A That's it.

15 Q So is there a first vice president for each
16 of these divisions?

17 A I don't know.

18 Q Is there -- does Scott Barnes have a person
19 that he answers to every day who is employed by LPS?

20 A Yes.

21 Q And who is that?

22 MR. CASH: Again, just object to the form of
23 the question. Which LPS?

24 MR. WOOTEN: Default Solutions.

25 MR. CASH: Okay.

1 THE WITNESS: No.

2 BY MR. WOOTEN:

3 Q Okay. So whomever he answers to is in
4 charge of the entire spinoff?

5 A Not the entire spinoff, no.

6 Q Well, tell me who he answers to. Or who's
7 his boss?

8 A Clay Cornett.

9 Q And what is Clay's title?

10 A I don't -- I don't know his title off the
11 top of my head.

12 Q Would it be available from LPS's website or
13 information that's publicly available?

14 A I believe so.

15 Q Is LPS publicly traded?

16 A Yes.

17 Q What is its symbol?

18 A LPS.

19 Q And a glaring question of the obvious,
20 right?

21 Do you know if Clay Cornett has a boss in
22 LPS?

23 A Yes, he does.

24 Q And who is that?

25 MR. CASH: Again, and I hate to be the

1 stickler, but there's LPS, Inc., and there's LPS
2 Default Solutions. LPS Default Solutions is what
3 was once the defendant in this case, Fidelity
4 National Foreclosure & Bankruptcy Solutions. So
5 when you say LPS, I just need us to define LPS,
6 whether you're talking about Inc. or the separate
7 entity LPS Default Solutions.

8 BY MR. WOOTEN:

9 Q My question is much simpler. I'm just
10 asking if Clay Cornett has a boss. I mean, that's
11 what I'm trying to find out. I mean, if it -- he's
12 already said that Scott Barnes doesn't have a boss in
13 LPS Default Solutions, haven't you?

14 A Yes.

15 Q So Clay Cornett is obviously working for
16 Inc.?

17 A I believe so.

18 Q Okay. And who does Clay Cornett answer to?

19 A That would be Eric Swenson.

20 Q Is he the person who is overall in charge of
21 LPS, Inc.?

22 A No.

23 Q Who is over Eric Swenson?

24 A That would be the CEO, Jeff Carbiener.

25 (Brief interruption.)

1 THE WITNESS: Carbiener.

2 MR. CASH: Why don't you spell that for her,
3 unless you don't know how, and I won't put you on
4 the spot since he's the boss.

5 THE WITNESS: No.

6 BY MR. WOOTEN:

7 Q Is it C-E-R-B-I-N-E-R?

8 A C-A-R-B-I-N-E-R, I believe, I don't know.

9 Q Okay. So everything starts at Jeff
10 Carbiener and flows downhill on your side through Eric
11 Swenson, Clay Cornett, Scott Barnes and then to you?

12 A That would be correct.

13 Q And then you have your management team that
14 we talked about earlier, and we talked about three of
15 the four people on that team, right?

16 A That's correct.

17 Q Other than Invoice Management, Document
18 Management, and Process Management, are there any
19 other things which fall into that general category
20 with respect to your Attorney Management network?

21 A No, that's it.

22 Q Who is the fourth member of your team?

23 A Christine Anderson. She's the peer of Chuck
24 Martisek.

25 Q Does she spell her name S-O-N or S-E-N?

1 A S-O-N.

2 Q And you mentioned she was the peer of
3 Mr. Martisek?

4 A That's correct.

5 Q Does she have a separate responsibility than
6 him?

7 A Primarily the same responsibility.

8 Q Does she handle a different portion of the
9 country or --

10 A Yes.

11 Q And I -- let me double-check, did I ask you
12 what portion of the country Mr. Martisek was
13 responsible for?

14 A I don't believe so.

15 Q Okay. And do you know?

16 A I -- it's broken up differently by each
17 state.

18 Q So it's not necessarily geographic?

19 A No. They only channel certain states, 50
20 states and the other two provinces.

21 Q With respect to the work that Ms. Anderson
22 and Mr. Martisek do, are there separate divisions in
23 their department where different employees work with
24 different portions of this process?

25 A No.

1 Q So every LPS employee who is within the
2 attorney foreclosure referral network is available to
3 do all the same type of work, as far as --

4 A Not -- not the referral network, no.

5 Q Okay.

6 A I don't quite understand your question in
7 reference to referral.

8 Q Maybe I didn't ask it well. Do you have --
9 you said these people are in charge of your attorney
10 management network?

11 A Uh-huh.

12 Q And that basically included your core
13 foreclosure steps?

14 A That's correct.

15 Q Where does your bankruptcy Process
16 Management fall in that?

17 A Basically the foreclosure process begins
18 from the time that the attorneys receive their
19 referral.

20 Q Okay. And where does the referral come
21 from?

22 A It comes from the client.

23 Q And how does the client make the referral?

24 A How do they make the referral?

25 Q Sure.

1 A I don't know off the top of my head.

2 Q Do they -- does Option One pick up the phone
3 and call Scott Humphrey in Birmingham and say, I want
4 you to foreclose for us?

5 A No.

6 Q Is that not run through LPS?

7 A The client makes the decision on when to
8 refer the loan for foreclosure, which we get a file
9 from Option One, along with the necessary documents.

10 Q So your testimony is, is that Option One
11 provides the referral package to LPS?

12 A That is correct.

13 Q And that LPS refers the foreclosure to the
14 attorney?

15 A Electronically, we provide the information
16 to the attorneys.

17 Q Again, you indicated that Option One would
18 be the entity which chose the attorney?

19 A That's correct.

20 Q I mean, are they free to select any attorney
21 or are they only allowed to select Fidelity referring
22 attorneys or --

23 A They're free to choose any attorney they'd
24 like.

25 Q Are you aware of whether or not there is a

1 contractual provision within the agreement between
2 the servicers and LPS which requires them to use
3 attorneys within the attorney network of LPS?

4 A No, I'm not.

5 Q And again, you indicated you have not read
6 any of those contracts?

7 A My understanding is that we do not choose
8 any of the attorneys.

9 Q Your system is capable of harnessing a lot
10 of information, right?

11 A That is correct.

12 Q And you're capable of reporting features
13 about pretty much all that you do as an entity,
14 correct? I mean, as far as how fast you meet your
15 time line goes, what percentage of foreclosures take
16 place within your time lines, you know, what
17 percentage of issues are resolved within the
18 appropriate amount of time, pretty much anything you
19 want to find out that's on your software, your MSP
20 software, you pretty much have a reporting function
21 for, don't you?

22 A Not MSP, no.

23 Q What about with respect to Process
24 Management?

25 A We have the ability to produce reports based

1 off of Process Management, yes.

2 Q Sure. Are there any attorneys who are not
3 members of the Fidelity -- or the LPS attorney network
4 who can access your Process Management system?

5 A Not that I'm aware of.

6 Q And is it a fact that the only attorneys who
7 are using Process Management are attorneys who have
8 signed a referral agreement with LPS?

9 A That would be correct.

10 Q So, while your clients are free to choose
11 whomever as a foreclosing attorney, if they are an MSP
12 user and they are an LPS -- they have an LPS agreement
13 with you for Default Solutions, the only attorneys
14 available on LPS system are attorneys who have signed
15 a contract with LPS?

16 A That have signed a contract with LPS, yes.

17 Q So when you say that your servicing clients
18 are free to choose whomever, with respect to referring
19 it through LPS, that is illusory, isn't it?

20 A I don't understand what you mean by
21 illusory.

22 Q Well, there are 14,000 lawyers in the state
23 of Alabama approximately.

24 A Uh-huh.

25 Q And your testimony is, is that Option One

1 could've chosen any lawyer to foreclose on this loan
2 if they wanted to, but if they have a contract with
3 LPS to provide default solutions, does that contract
4 not require them to make a referral through LPS?

5 A Not necessarily.

6 Q Have you -- well, never mind.

7 A Clients -- clients can choose to refer any
8 way they'd like.

9 Q If they want the loan to stay on the MSP and
10 LPS system, don't they have to go through LPS and use
11 an attorney network member?

12 A The clients? Yes. They need to use our
13 system at their choice.

14 Q So, again, while you say that they can
15 choose whomever, if they keep the loan on your system,
16 they can only choose attorneys in your network?

17 A No. They can -- they can choose to use an
18 attorney outside the network and be able to update
19 that information through the client. The client has
20 the ability to be able to update the system just like
21 an attorney. If the attorney chooses not to sign the
22 agreement, then basically the updates can be provided
23 through the client into our LPS system.

24 Q Well, let me ask you this. Do you have any
25 statistics on whether or not any foreclosures which

1 were referred to LPS or sent to an attorney who was
2 not a member of LPS's attorney network?

3 A No, I do not have statistics on that.

4 Q Is it because the number would be zero?

5 A No.

6 Q And there are no reporting functions in your
7 software that will give you that information?

8 A I don't know.

9 Q And you've never asked that question?

10 A No, I have not.

11 THE VIDEOGRAPHER: Excuse me. May I change
12 videotape?

13 MR. WOOTEN: Sure.

14 THE VIDEOGRAPHER: Off record at 11:07.

15 (Brief recess.)

16 THE VIDEOGRAPHER: Back on record at 11:19,
17 beginning of Videotape No. 3.

18 MR. WOOTEN: I need to go ahead and tell
19 y'all, I've got a 2:30 that I'm going to have to
20 take a short break, 2:30 local time. I've got to
21 call in a federal case that I've got to deal
22 with. So --

23 MR. CASH: Okay, whatever works for you.

24 MR. WOOTEN: -- we'll try to structure
25 breaks around that, so -- but I wanted to give

1 y'all a heads-up.

2 MR. CASH: Okay.

3 BY MR. WOOTEN:

4 Q With respect to your operations, is there a
5 separate division within your company that deals
6 solely with bankruptcy issues, or a separate group of
7 people?

8 MR. CASH: I'm going to object to that
9 question and tell you not to answer about
10 bankruptcy, unless, Nick, you can tell me -- this
11 case isn't even in bankruptcy.

12 MR. WOOTEN: I'm just trying to clarify the
13 structure of this entity.

14 MR. CASH: All right. Go ahead and answer
15 the bankrupt -- that one bankruptcy question.

16 THE WITNESS: Yes.

17 BY MR. WOOTEN:

18 Q In our notice of deposition to you, we asked
19 for all the same categories of documents that we asked
20 for from your foreclosure department with respect to
21 your REO department, with respect to the software
22 called MSP employed by LPS. Did you produce any
23 documents, images, notes, communications, with respect
24 to the note fields or the contents of the REO portion
25 of the MSP software?

1 A No.

2 Q Would that be the same answer with respect
3 to the area regarding bankruptcy?

4 A I don't believe there was any bankruptcy
5 notes.

6 Q Okay.

7 A But no.

8 Q Are you familiar with a note field called
9 the Consolidated Note Logs?

10 A No, I'm not. That would be an MSP, correct?

11 Q That's correct.

12 A No, I'm not.

13 Q Have you had any training whatsoever with
14 respect to the capabilities of the MSP software which
15 your company employs?

16 A I've had partial training back in 2002.

17 Q Is that when you --

18 A With Option One.

19 Q With Option One?

20 A Yes.

21 Q With respect to the ability of the employees
22 who work for LPS to change the information contained
23 in your servicers' files, who are your clients, is it
24 your testimony that your employees at LPS have that
25 capacity?

1 A We have the ability to change certain
2 screens within the MSP environment.

3 Q Okay. And are you familiar with whether or
4 not the MSP platform, or MSP, makes any record of
5 those changes and saves it anywhere within the MSP
6 system or any backup of the MSP system?

7 A I don't know on the MSP system.

8 Q What about with respect to either Process
9 Management or Document Management?

10 A Process Management does document the notes
11 in our note screen, time stamped.

12 Q Does it document the changes?

13 A Yes.

14 Q Would there be anything that you are aware
15 of which would be accessible by a user which would
16 indicate what data was changed, who changed it, and
17 when it was changed?

18 A In which system?

19 Q In -- let's begin with MSP.

20 A That, I don't know.

21 Q With Process Management.

22 A We do have tracking mechanisms in MS -- or
23 in Process Management that identify and time stamp the
24 changes and/or notes that are inputted into the
25 system, event completions, everything.

1 Q All right. And with respect to that, would
2 it indicate in Process Management if any data fields
3 were altered in MSP?

4 A That, I don't know.

5 Q Do you know who might be the person who
6 might have that information?

7 A No, I don't.

8 Q Would that also -- if you were to have to
9 hazard a guess, would it be someone in data security?

10 A I don't know.

11 Q Are you familiar with the term a key
12 transaction report?

13 A No, I'm not.

14 Q Are you familiar with whether or not that is
15 an MSP report?

16 A I'm not aware of that report at all.

17 Q Are you familiar with a training database
18 known as The Learning Center?

19 A No, I'm not.

20 Q When you had your initial training with MSP
21 when you were employed by Option One, was that
22 training web based?

23 A No, it was not.

24 Q It was done on-site?

25 A Side by side with one of my associates.

1 Q When you say associate, what do you mean?

2 A One of our associates that was in the
3 foreclosure and bankruptcy department back with Option
4 One.

5 Q So when you say associates, you're not
6 talking about an employee of LPS --

7 A No.

8 Q -- or at that time Fidelity?

9 A No, you asked me when my training was, I
10 told you it was back with Option One back in 2002.

11 Q And I was just trying to verify --

12 A Sure.

13 Q -- because my understanding is, is that --
14 well, isn't it true that with certain servicers, LPS
15 places employees on-site?

16 A Yes, we will place employees on-site.

17 Q And isn't it true that part of what they do
18 is work with that servicer's employees about using
19 LPS's software, MSP --

20 A Not for LPS Default Solutions, no.

21 Q So they would use the Process Management
22 software?

23 A They would use the Process Management
24 software.

25 Q And they would be there to train those

1 employees about --

2 A Not necessarily train those employees. When
3 we place people on-site, it's basically to assist them
4 with whatever needs that the client may need at that
5 time that we cannot do in-house ourselves.

6 Q What are some examples of the types of
7 things that would require an LPS employee to be
8 on-site?

9 MR. CASH: I'm going to object to that
10 question unless we've got some evidence or some
11 issue here that -- I have no objection to you
12 answering with regard to this servicer and this
13 loan, but we're not going to just keep fishing on
14 everything.

15 MR. WOOTEN: Are you instructing him again
16 not to answer the question?

17 MR. CASH: I'm instructing him to answer any
18 questions regarding this transaction, this
19 servicer, this case, but I am instructing him not
20 to answer generally across the board in this
21 fishing expedition. We're here on the Wood case,
22 and that's all we're here to testify about.

23 MR. WOOTEN: Do you have any legal authority
24 that says that you have the right to limit my
25 discovery based on your whims?

1 MR. CASH: It's not my whims, it's the rules
2 of procedure, including the rules of Alabama and
3 the federal rules, require that the first hurdle
4 in making something discoverable is that it must
5 be relevant. That is step one. After relevance,
6 it need not be admissible, but it must lead to
7 the discovery of admissible evidence. But first
8 and foremost it may be relevant.

9 MR. WOOTEN: Okay. So your testimony or
10 your --

11 MR. CASH: It's not my testimony.

12 MR. WOOTEN: Your objection is --

13 MR. CASH: My objection is it's irrelevant.

14 MR. WOOTEN: Your objection is to relevance.
15 Let's make sure that we're clear about that.

16 MR. CASH: It's irrelevant, it's harassing,
17 it's a fishing expedition, it's beyond the scope
18 of this case. And as such, we're not going to go
19 into a fishing expedition on this stuff. That's
20 my objection.

21 MR. WOOTEN: Okay. And --

22 MR. CASH: And if the Court disagrees and
23 thinks you have free reign to ask about anything
24 and everything you want regardless of whether
25 it's associated with this case or not, that would

1 be different than the jurisprudence of every
2 state I've ever practiced in, but so be it and
3 we'll deal with that at that time. But right
4 now, we're not going into this wide ranging
5 fishing expedition. Again, Nick, unless you can
6 tie it somehow to this case; in which case, I
7 will reconsider.

8 MR. WOOTEN: You know, Mike, the problem is,
9 is that it's not your decision. It's my
10 deposition, it's my discovery.

11 MR. CASH: But you don't have the right --

12 MR. WOOTEN: I'm trying to understand the
13 process which LPS employs to provide these
14 services to their clients. And I asked your
15 client to provide me examples of the types of
16 reasons why they would locate an employee on-site
17 with a servicer, as a hypothetical, as the person
18 most knowledgeable about why LPS does everything
19 that they do, which he is supposed to be
20 designated to be.

21 MR. CASH: But he is not here to testify
22 about everything --

23 MR. WOOTEN: And so --

24 MR. CASH: -- LPS does, because this --

25 MR. WOOTEN: -- please let me finish my

1 response to your objection.

2 MR. CASH: Because this is not what this
3 case is about.

4 MR. WOOTEN: I don't care. The point
5 being --

6 MR. CASH: I know. And therein lies the
7 point, you don't care.

8 MR. WOOTEN: The point being that I have a
9 right --

10 MR. CASH: This isn't a --

11 MR. WOOTEN: Okay. You know what, you
12 should take up --

13 MR. CASH: So he's going to answer his
14 questions with regard to this case --

15 MR. WOOTEN: -- your problems with Mike
16 wherever you want to. That doesn't have anything
17 to do with me. I'm here about this case.

18 MR. CASH: It has everything to -- okay,
19 then, fine, we will --

20 MR. WOOTEN: The cases that I have with
21 Option One that involve LPS.

22 MR. CASH: And other cases. See, we're not
23 here for other cases.

24 MR. WOOTEN: It doesn't matter.

25 MR. CASH: We're here for one case, the Wood

1 case.

2 MR. WOOTEN: You're sitting here trying to
3 tell me --

4 MR. CASH: And he will answer each and every
5 question you have about the Wood case --

6 MR. WOOTEN: Sure.

7 MR. CASH: -- or that's relevant to the Wood
8 case --

9 MR. WOOTEN: Okay. Well, let's --

10 MR. CASH: -- without objection.

11 MR. WOOTEN: Again, let's make sure we
12 understand each other. I'm trying to ask a
13 question about why your client does what they do,
14 including putting employees on-site, as a general
15 rule, so that I can understand how your client's
16 business operates and where their employees might
17 be who might could sign documents in their name,
18 and you're telling your client not to answer. So
19 I just want to be clear that that's what you're
20 doing, Mike.

21 MR. CASH: Well, if you want to be clear,
22 then let me make it as clear as I can to you,
23 Nick. You just said it, and I'm glad it's on the
24 record --

25 MR. WOOTEN: Sure.

1 MR. CASH: -- you're here because you have
2 this case and other cases --

3 MR. WOOTEN: You're right, I do.

4 MR. CASH: -- involving Option One and LPS.
5 This lawsuit is not a vehicle for you to do
6 discovery in other cases. This lawsuit is for
7 this lawsuit. And this witness will answer each
8 and every question you have that has anything to
9 do with this lawsuit. But we will not come here
10 and basically have an exposé on our company
11 because it suits your whim. It is not relevant
12 to any issue in this case. In this case, there
13 is no allegation that any LPS employee was put
14 on-site who did anything with regard to this
15 loan. And that's why we're here.

16 So unless you have an allegation that
17 supports that or something that supports that,
18 we're not going to talk in generalities, we are
19 here to testify about this case. It is
20 irrelevant, it is harassing, it is overreaching,
21 and I am instructing him not to answer questions
22 that don't deal with this case anymore. And I've
23 given you wide range to do it so far.

24 MR. WOOTEN: And, again, I'm going to
25 explain to you that the rules of procedure and

1 evidence and discovery in Alabama don't allow you
2 as the defense counsel to limit my inquiry in a
3 deposition. Everybody involved here, with the
4 exception of Mr. Newland and these court
5 reporters, has made a special trip down here to
6 take this deposition --

7 MR. CASH: I'm one of them.

8 MR. WOOTEN: -- and spent a lot of money
9 coming to take this deposition.

10 MR. CASH: So have I.

11 MR. WOOTEN: And rather than have an
12 objection which preserves your right to have that
13 limited, you're instructing the client not to
14 answer.

15 MR. CASH: Yes.

16 MR. WOOTEN: I just want to be real clear
17 about that.

18 MR. CASH: We're real clear on that, Nick.
19 And the reason I'm doing that is you don't get to
20 use this case as a vehicle to gather your
21 information, which you couldn't care less whether
22 it's relevant or not, so you can go off and use
23 it in your other cases. And what you would love
24 is for me to allow him to answer, make my
25 objections, which you could care less whether

1 they're sustained or overruled, because you've
2 gotten what you wanted, which is the information.
3 I am not going to play that game. If the Court
4 disagrees with me, I will put this on the record,
5 and we have to redo any of the questions that
6 I've instructed him not to answer, we will do it
7 in Alabama and I will pay the costs for him to
8 come down, for me to come down, and I'll pay the
9 cost of the court reporter to redo the
10 deposition.

11 MR. WOOTEN: And you'll pay my time for
12 having to retake it, right?

13 MR. CASH: No, I'm not going to pay your
14 time, Nick, because I think you're the reason
15 that we're having the problem. But I will do
16 all -- I will make all those other offers.

17 MR. WOOTEN: Well, wait a minute, you just
18 said that if the Court disagrees with your narrow
19 construction of my right to discovery, that
20 you'll pay everybody else's costs associated with
21 having to redo this but mine.

22 MR. CASH: If the Court tells me that I have
23 to pay you reasonable attorney's fees to reask
24 the questions I've instructed him not to answer,
25 I think there's four or five so far, for those

1 four or five questions, you bet. You bet. I
2 will pay your time for that one hour that it
3 takes to ask four or five questions. You got it.

4 MR. WOOTEN: You know what, again, Mike --

5 MR. CASH: So there we go.

6 MR. WOOTEN: -- you're not the person in
7 control of this case.

8 MR. CASH: No, I'm not.

9 MR. WOOTEN: The person who is elected by
10 the citizens of DeKalb County to control this
11 case --

12 MR. CASH: I agree completely, but he's not
13 here.

14 MR. WOOTEN: You don't have the right to
15 substitute your judgments for his.

16 MR. CASH: Nor do you have right to run
17 roughshod because he's not here. That's why this
18 is an adversarial process.

19 MR. WOOTEN: You have the right to object.

20 MR. CASH: And I will make my objections.

21 MR. WOOTEN: And you don't have the right to
22 instruct your witness to limit his answers.

23 MR. CASH: The objection -- well, I disagree
24 with you. I have the right to instruct my
25 witness when the questioning is harassing, which

1 it becomes when it's completely irrelevant, I do
2 have the right to instruct him not to answer.

3 That's true under the federal rules and --

4 MR. WOOTEN: If you're telling me --

5 MR. CASH: -- it's true under my reading of
6 the Alabama rules.

7 MR. WOOTEN: -- that you interpret
8 harassment as wanting to know why this corporate
9 defendant, who is involved in a vast majority of
10 all the foreclosures in this country, chooses to
11 locate employees with a servicer to support their
12 foreclosure efforts, if you're telling me that
13 that's your basis for saying that my question's
14 not relevant, I just want to be real clear about
15 that. Now with respect to you instructing the
16 person not --

17 MR. CASH: I mean, you keep saying you need
18 to be real clear. I think I've made it clear.

19 MR. WOOTEN: If you --

20 MR. CASH: The record's clear.

21 MR. WOOTEN: How about letting me finish
22 before you interrupt.

23 MR. CASH: How about why don't you just ask
24 questions. Because here's what you're not going
25 to do, you're not going to convince me and I am

1 not going to convince you.

2 MR. WOOTEN: I'm not trying to convince you.
3 I could care less what you're convinced of.

4 MR. CASH: Well, then quit preaching to me
5 and ask your questions. I will do what I need to
6 do, which is object and instruct not to answer.
7 The record's clear what I'm saying --

8 THE REPORTER: The record is not very clear
9 with you guys talking on top of each other, I'm
10 sorry.

11 MR. WOOTEN: Sure. And I'm trying to hold
12 off. I apologize.

13 MR. CASH: So I will make my objections and
14 my instructions. You ask your questions, he will
15 give answers.

16 MR. WOOTEN: Okay. So let's --

17 MR. CASH: That's where everybody is.

18 MR. WOOTEN: Let's just go and make this
19 agreement then. If you instruct him not to
20 answer all this stuff you just run through about
21 your right to control my discovery, that'll just
22 be part of that objection and your instruction
23 not to answer, okay?

24 MR. CASH: I will state my grounds for my
25 objection so it's clear to the Court. And I

1 don't have any right to control your discovery.
2 The only thing I have the right to do is not have
3 my witness to testify to things that are
4 completely outside the scope of this case. And
5 that's all I'm doing.

6 MR. WOOTEN: And my only burden is to show
7 that it might lead to discovery of admissible
8 evidence.

9 MR. CASH: That's where you're wrong. You
10 have two burdens: First, you must show it's
11 relevant, and then you must show that it's
12 reasonably likely to lead to the discovery of
13 admissible evidence; it's a two-prong test.

14 MR. WOOTEN: So your statement it's not
15 relevant is based upon the fact that you have
16 determined that how your client does business in
17 a national foreclosure mill is not relevant to
18 what happened in a case involving a wrongful
19 foreclosure.

20 MR. CASH: My objection on this particular
21 question is, there is no evidence, nor is there
22 any allegation that my client had an employee
23 placed at Option One who had anything to do with
24 this particular foreclosure. As such, what our
25 policies are regarding placing employees at any

1 particular location are not relevant to any issue
2 raised in this lawsuit regarding this loan, which
3 is why we are here. That is my objection, for
4 the third time, and it will not change.

5 MR. WOOTEN: Okay. And what I am trying to
6 do, Mike, is prevent you from continuing to coach
7 your witness through your objections and prevent
8 you from continuing to instruct your client not
9 to answer, so that when we go to court on these,
10 I'm not sitting here with a situation where every
11 time you do that, you create a situation where I
12 have to respond on the record. So what I'm
13 asking you to do, to preserve time, because we're
14 going to need a lot of it to get through today,
15 is to agree with me that if you instruct your
16 client not to answer during the balance of the
17 time that we're here today, that we'll just agree
18 that what you're agreeing to is if the Court
19 finds that he should've answered, that you'll pay
20 the costs associated with retaking that
21 deposition. So that that's on the record. And
22 when you tell him not to answer, if that's your
23 choice, that'll be fine, and we'll go right up
24 there and we'll deal with it after the fact.

25 MR. CASH: I've already agreed to that.

1 MR. WOOTEN: Okay. Well --

2 MR. CASH: The only part that I don't agree
3 to is I can't pre-agree what the basis of the
4 deposition is until I -- of the objection is
5 until I hear the question, Nick.

6 MR. WOOTEN: Okay. Well, that wasn't what I
7 understood you to say. So if I misunderstood
8 you, I apologize. If you have a different
9 grounds for objection other than just telling him
10 not to answer it, absolutely, please make it.

11 MR. CASH: I've never instructed him just
12 not to answer without making an objection first.

13 MR. WOOTEN: Okay. Well, that will be fine.
14 So whenever you tell him not to answer, rather
15 than us have a ten minute conversation about it,
16 we'll just have this agreement as a standing
17 agreement for the rest of this deposition, okay?

18 MR. CASH: That is absolutely fine with me.

19 MR. WOOTEN: That'll be fine.

20 Now, with respect to -- ma'am, I'm sorry, do
21 we need to take break and let you get caught up? Are
22 you all right? Okay. Is everybody else okay?

23 BY MR. WOOTEN:

24 Q With respect to Mr. Newland, we're still
25 looking at the very first thing I marked, which was

1 the deposition notice. With respect to your Document
2 Management, that is also, as we talked about, called
3 NewTrak, correct?

4 A No, it's not.

5 Q New Document Management used to be called
6 NewTrak; is that right?

7 A No.

8 Q Okay. What did Document Management used to
9 be called? Is there a previous name for your Document
10 Management software?

11 A I'm trying to remember what it was. I don't
12 recall off the top of my head.

13 Q Let me look back at my notes. Imaging
14 Platform?

15 A That's -- it was referenced as New Image, is
16 what the actual name was.

17 Q Were there initials for that, something to
18 the effect of NIE?

19 A Yes.

20 Q And your testimony is, is that every
21 document with respect to the Woods' loan that we're
22 here about today you produced as part of Exhibit 24
23 that is contained in the Document Management or
24 imaging platform of the software that your client --
25 your company employs, LPS?

1 A Yes.

2 MR. CASH: Just for the record, we do need
3 to check on the Invoice Management that you had
4 mentioned, and I need to go back and see if
5 there's any Invoice Management documents. And if
6 there are, after lunch, we'll produce those. So
7 there may be invoices that aren't part of the
8 Exhibit 24. But I will verify that.

9 MR. WOOTEN: Are you also willing to verify
10 whether or not there are any of the P309
11 documents I referenced in Item No. 1 of this
12 case?

13 MR. CASH: Here's what I want to explain,
14 Nick, that I don't think is fully understood.
15 MSP is not a default software, it's not one of
16 our softwares. You keep asking about MPS, that's
17 a different Fidelity entity. What we have, and
18 what he's tried to explain, is we have NewTrak,
19 which is Process Management, so that's -- we have
20 all the NewTrak, we have the imaging system,
21 which we talked about, and we have the invoice
22 system. So those are the three systems that are
23 our documents that I can get you. The others are
24 not default -- remember, we narrowly defined what
25 this defendant is, they are not this defendant's

1 documents, and the information contained in those
2 are the client's information. So the best place
3 to get the MSP screens would be from Option, not
4 from us. They're the ones that have their
5 information in that format. So that's what I was
6 trying to --

7 MR. WOOTEN: All right.

8 MR. CASH: That's my explanation, if that
9 helps.

10 MR. WOOTEN: I hear what you're saying. And
11 all I'm trying to ask the question is, and you
12 can tell me, you're sitting there with your
13 corporate lawyer, are you able as LPS to produce
14 the documents that we marked as Exhibit 1 -- or
15 the first request that we made with respect to
16 the P309 fields, and that is an MSP field?

17 MS. NEWMAN: Can we go off the record?

18 MR. CASH: Sure, if it's okay with him, it's
19 Nick's deposition.

20 MR. WOOTEN: Fine.

21 THE VIDEOGRAPHER: Off record at 4:41 --
22 11:41, sorry.

23 (Off the record discussion.)

24 THE VIDEOGRAPHER: Back on record at 11:48.

25 MR. CASH: Just so it's clear, because I do

1 want this on the record. I will allow my witness
2 to answer questions which I do not think are
3 relevant today, but it will have to be subject to
4 a confidentiality agreement that this deposition
5 will only be utilized in this case and for eyes
6 only in this case. And, Nick, I understand off
7 the record you were unwilling to do that, but I
8 did want at least the Court to be clear that I'm
9 not just going to instruct him not to answer. I
10 am worried about our confidentiality, and I would
11 be willing to allow him to answer even questions
12 that I think are irrelevant if it's limited to
13 use only in this case and it's kept confidential.

14 MR. WOOTEN: Sure. And with respect to
15 that, my position is, is that what's implicated
16 by this company and its processes is much too
17 serious to simply agree to wash it away with a
18 confidentiality order. So, I'd rather you just
19 make the objections as you have, and we'll go
20 forward with the agreement. If they're proper,
21 then you'll never have to answer them in this
22 case; if they're not proper, then eventually we
23 will.

24 MR. CASH: All right. Fair enough. And I
25 obviously take objection to the implication of

1 it's far too big. This is a \$1300 case where we
2 did nothing wrong. But save and except that, go
3 ahead.

4 MR. WOOTEN: Sure.

5 BY MR. WOOTEN:

6 Q And, Mr. Newland, with respect to our
7 request for life of loan transaction history, I
8 understand that would be an MSP document. Is it your
9 testimony that you were or were not able to produce
10 that from -- with respect to what we brought here
11 today?

12 A I was not able.

13 Q Did you attempt to produce it?

14 A I didn't even know what the life of the loan
15 transaction history was.

16 Q Did you talk with anybody who --

17 A No, I did not.

18 Q -- works on the floor and deals with your
19 accounts on a day-to-day basis --

20 A No.

21 Q -- about that?

22 MR. CASH: Let him answer his question, so
23 you get -- the record won't be complete if he's
24 still asking and you're starting your answer.

25 THE WITNESS: Oh, okay. Got it.

1 BY MR. WOOTEN:

2 Q Did you make any inquiry as to whether or
3 not it was available through access to the software
4 programs that LPS uses?

5 A No, I did not.

6 Q With respect to Item 12, having to do with
7 corporate advances, were you able to provide that
8 information?

9 A No.

10 Q With respect to any property inspections,
11 including the invoices and payment advices, were you
12 able to provide that information?

13 A I don't believe the invoices are in there at
14 this time.

15 Q What about property inspections?

16 A I'm aware of one property inspection, but I
17 do not believe the invoices are in that document. I
18 think that's something we're going to be getting
19 later.

20 Q Sure. Okay. So that's part of the imaging
21 platform that we talked about --

22 A Yes, it is.

23 Q -- or the Invoice Management platform --

24 A Yes.

25 Q -- that y'all are going to try to get during

1 lunch?

2 A Yes.

3 MR. CASH: Right.

4 Q And so same with respect to a broker price
5 opinion with respect to this loan, and I believe the
6 records indicate there were at least one broker price
7 opinion. Will y'all ever produce the information from
8 that?

9 A Trying to remember if it's in there or not.
10 I don't recall if it's in that agreement. I know we
11 produced all the documents, but I'm not...

12 Q Sure. And the broker price opinion is a
13 document that would be within the imaging portion or
14 the new document system, right?

15 A If it was uploaded, yes, depending on the
16 company that was utilized.

17 Q And -- okay. Well, that's another -- I
18 guess something I want to clarify. Can you tell us
19 exactly what a broker price opinion is?

20 A Basically, it's just an opinion by a broker,
21 basically does a drive-by assessment of the property.

22 Q Do they also take pictures and that sort of
23 thing normally?

24 A Some do, yes.

25 Q And I say that to draw the distinction

1 between a broker price opinion and a property
2 inspection, which is a true drive-by, where you're
3 just running by to see if the house is still standing
4 basically, right?

5 A Yeah. My understanding, the property
6 inspections is basically they'll go by and take a look
7 at the property.

8 Q Sure. Now, let me ask you this. With
9 respect to property inspections and broker price
10 opinions, are those items, items that are ordered on a
11 recurring basis within your division?

12 A That's all based off the client.

13 Q Okay.

14 A Client makes the determination on when they
15 order those.

16 Q And so, that would be within the Process
17 Management, if the client said they wanted a property
18 inspection every 30 days, then that would upload in
19 the Process Management?

20 A That's not in Process Management, that's
21 based off of their client system when they order the
22 property inspections.

23 Q Now, do they make a request for property
24 inspections to LPS?

25 A No, they do not. Not through LPS Default

1 Solutions.

2 Q Okay. Is it another sub-entity of LPS,
3 Inc.?

4 A It all depends on the client. Clients can
5 use different companies.

6 Q What about with respect to broker price
7 opinions, is that the same scenario?

8 A Same scenario, yes.

9 Q And so, are there companies which are either
10 related to or owned by LPS who handle broker price
11 opinions?

12 A Yes.

13 Q Okay. And what are those companies?

14 A It would be our Field Asset Services.

15 Q Is that commonly referred to as FAS?

16 A I don't -- all I know is Field Asset
17 Services, so...

18 Q Is Field Asset Services a subsidiary of LPS
19 or otherwise owned by LPS?

20 A Yes.

21 MR. CASH: Just for clarity, by LPS you mean
22 LPS, Inc., not LPS Default Solutions.

23 Q Sure. Let's -- yeah, let me be clear. FAS
24 falls under the LPS, Inc., structure?

25 A Inc.

1 Q Which is the same place that LPS Default
2 Solutions falls, right?

3 A Yes.

4 Q And Field Asset Services, do they only
5 provide broker price opinions?

6 A It would be property inspections. You asked
7 about the property inspections, I believe.

8 Q Okay. I'm sorry. So Field Asset Services
9 deals only with property inspections?

10 A That's correct.

11 Q Do not perform broker price opinions at all?

12 A No. Not to my knowledge.

13 Q And so, any invoices for property
14 inspections which indicated -- they would indicate who
15 actually was requested to make the inspection and who
16 was paid -- who invoiced it and who was paid for it,
17 right?

18 A It would be in Invoice Management.

19 Q Right. Okay. And with respect to broker
20 price opinions, I guess the same question, are there
21 any companies which are within the LPS, Inc., umbrella
22 who perform broker price opinions?

23 A Yes.

24 Q Okay. And what are their names?

25 A LSI.

1 Q Do you know what LSI stands for?

2 A No, I don't know.

3 Q And is that -- just to be clear, that is
4 also a subsidiary of LPS, Inc.?

5 A That's correct.

6 Q Do you know if LPS Default Solutions has
7 contracts for the provision of broker price opinions
8 by LSI?

9 A No, we do not.

10 Q Would LPS Default Solutions' clients, the
11 mortgage servicers, potentially have contracts for
12 broker price opinions with LSI?

13 A You would have to ask them.

14 Q That would not be any information within
15 LPS's purview?

16 A No.

17 Q Okay.

18 A LPS Default Solutions.

19 Q Right. LPS Default Solutions. With respect
20 to the property inspections or the broker price
21 opinions, does LPS Default Solutions have any
22 discretion as to who they order these services from?

23 A No.

24 Q Okay. That is purely a choice of the
25 servicer?

1 A Yes, it is.

2 Q And you do not know if there is a
3 contractual provision between LPS Default Solutions
4 and its servicing clients requiring them to use
5 companies which are under the LPS, Inc., umbrella for
6 these services?

7 A No, I do not.

8 MR. WOOTEN: Off the record again for a
9 minute.

10 THE VIDEOGRAPHER: Off record at 11:57.

11 (Off the record discussion.)

12 THE VIDEOGRAPHER: Back on record at 11:57.

13 BY MR. WOOTEN:

14 Q In preparing for this deposition,
15 Mr. Newland, did you determine whether or not any
16 force placed insurance had been placed upon the Wood
17 loan?

18 A We don't make a determination on the force
19 placed insurance, that's the client.

20 Q So that's an Option One decision
21 according --

22 A Yes, it is.

23 Q -- to LPS?

24 A Yes.

25 Q The contracts that I referred to earlier as

1 between LPS Default Solutions and either Option One or
2 Scott Humphrey, the other defendants in this case,
3 they would be contracts between these three entities
4 which are defendants. In other words, LPS Default
5 Solutions has a contract with Scott Humphrey, right?

6 A That's correct.

7 Q And then LPS Default Solutions has a
8 contract with Option One?

9 A That is correct.

10 Q And that contract would set forth the full
11 scope of the agreement for services which LPS Default
12 Solutions would provide to either of those entities?

13 MR. LAWLER: Again, I just want to object on
14 attorney-client privilege of any communication
15 between -- whether it's contract or verbal
16 communication or otherwise between Scott Humphrey
17 and LPS or Option One.

18 MR. WOOTEN: Okay. Well, Chris, I don't
19 want to get into a big fight with you about this
20 either -- I'm sorry, Mr. Lawler. But do you have
21 any authority that says that attorney-client
22 privilege is involved when you have three
23 codefendants, one of which happens to be an
24 attorney?

25 MR. LAWLER: Again, objection's on the

1 record. Fight it out later.

2 MR. CASH: I can't let you answer the -- not
3 my instruction, I can't let you answer the
4 question because it's their privilege. I can't
5 let you waive it.

6 MR. LAWLER: If you're speaking broadly in
7 terms of that there is one or not, then -- then I
8 don't have an issue with speaking broadly in that
9 situation. If we're getting into any specifics
10 of the substance or terms or what is actually in
11 there, then I'm just going to have to object.

12 MR. WOOTEN: I'm not asking him for hearsay,
13 Mr. Lawler. What I'm asking him for is if the
14 general agreement, which they would provide to
15 any attorney who is part of their network, sets
16 forth all of the parties' relative rights and
17 responsibilities with respect to what services
18 they provide one to the other, what they will be
19 paid, if that is the complete agreement or if
20 there are any other agreements other than the one
21 we discussed.

22 MR. CASH: I think he can answer that --

23 MR. LAWLER: Yes, that's fine.

24 MR. CASH: -- I don't think it's privileged.
25 I mean, to the extent you know, you can answer

1 that question.

2 THE WITNESS: Okay.

3 MR. CASH: Why don't you ask it again.

4 THE WITNESS: Can you ask it again?

5 Because --

6 MR. WOOTEN: Sure.

7 THE WITNESS: -- there's a lot of going back
8 and forth here.

9 BY MR. WOOTEN:

10 Q We've mentioned one agreement as between
11 Scott Humphrey, LLC, who handled the foreclosure in
12 this case, and Default Solutions -- or LPS Default
13 Solutions, and we mentioned one agreement as between
14 LPS Default Solutions and Option One. And what I'm
15 asking you is, is that the only agreement existing
16 between LPS Default Solutions and Scott Humphrey? Is
17 there any other agreement other than that agreement?

18 A Not that I'm aware of.

19 Q Okay. And same question with respect to
20 Option One, is there simply one agreement which
21 defines all the parties' rights, including who will
22 pay who what and when and everything else?

23 A Not that I'm aware of any other agreements.

24 MR. CASH: Wait. I just -- I don't think
25 those two match. I think he said, is there only

1 one agreement, and I think you said, not that I'm
2 aware of. I think we just want to make -- I just
3 want your record to be clear.

4 MR. WOOTEN: Sure.

5 MR. CASH: You're asking is there only the
6 one agreement, right?

7 BY MR. WOOTEN:

8 Q My question is, is there -- there's one
9 contract that we have talked about, that I don't have
10 a copy of here today, between LPS Default Solutions
11 and each of the other codefendants, one with Scott
12 Humphrey and one with Option One. And what I'm asking
13 is, is are there any other written agreements, other
14 than those individual agreements we just talked about,
15 with respect to any of the other defendants to this --
16 to this action?

17 A Not that I'm aware of.

18 Q Okay. Have you reviewed the information
19 which you produced to us today in preparing for this
20 deposition with respect to the documents that were
21 produced and marked previously as document -- as
22 Plaintiffs' Exhibit 24?

23 A Yes.

24 Q You've gone through each of those documents
25 individually?

1 A I've looked at them, yes.

2 Q Okay. Were you able to ascertain from those
3 documents that force placed insurance was actually in
4 place with respect to the Wood loan?

5 A No, it was not.

6 Q Okay. Are there any companies which provide
7 force placed insurance who fall within the LPS, Inc.,
8 umbrella?

9 A I don't know.

10 Q You're not aware of any?

11 A I don't know.

12 Q Again, with respect to something that we
13 indicated as the DDCH screen, which I will represent
14 to you is a screen within MSP, did you make any
15 inquiry as to whether or not you could access that
16 screen and obtain copies of any images or
17 correspondence or data contained within that field?

18 A No, I did not.

19 Q Did you ask anyone on your behalf to make
20 any inquiry?

21 A No, I did not.

22 Q As we sit here today, do you have any idea
23 as to whether or not an employee of LPS Default
24 Solutions could readily access that information from
25 any terminal of LPS Default Solutions?

1 A I don't know the answer to that question.

2 Q And you made no inquiry?

3 A Not at this time.

4 Q With respect to the information in the field
5 called the Fee 1 screen, which I'll represent to you
6 is also an MSP field, did you make any inquiry as to
7 whether or not you could obtain any images or copies
8 from that field?

9 A No, I have not.

10 Q And would your response be the same with
11 respect to the DDCH, that you did not seek to have
12 anyone verify whether or not an LPS Default Solution
13 employee could get to that information?

14 A No, I did not. I don't know. It would be
15 the same as the P309 screen.

16 Q Actually, it's a little bit easier to get to
17 than the P309 screen.

18 A Okay.

19 Q With respect to the identification of each
20 and every user who input any information into the
21 Fidelity system regarding a client's loan, I think
22 y'all provided a fairly decent number of persons who
23 had been involved in that. Did you make an effort to
24 obtain that information from the software?

25 A The Fidelity system as being Process

1 Management?

2 Q Well, and I guess because --

3 A Because Process Management, we did, so...

4 Q Sure. And I guess that's where I need to
5 clarify. What -- are you saying that what you
6 produced is that information with respect to Process
7 Management?

8 A That is correct.

9 Q Okay. What about with respect to Document
10 Management?

11 A No, we did not provide them with Document
12 Management.

13 MS. NEWMAN: I'm sorry, I wasn't listening.

14 MR. WOOTEN: Well, what I asked for had to
15 do with respect to the area of inquiry of No. 19,
16 which was information identifying each user who
17 inputted information into the system. And I will
18 just tell the two of you that previous to today,
19 I had never had anybody try to distinguish
20 between the platforms that he's referenced with
21 Process Management, Document Management, invoice
22 billing as not being a part of MSP. So that was
23 the reason that that request was phrased in that
24 way.

25 MR. CASH: Okay.

1 MR. WOOTEN: So I'll adjust those requests
2 in the future.

3 BY MR. WOOTEN:

4 Q So what you're saying is, is that you
5 provided Process Management --

6 A That's correct.

7 Q -- but you did not inquire as to whether
8 there were any different --

9 A Document Management.

10 Q -- users in Document Management?

11 A Right.

12 Q And with respect to the MSP fields, you did
13 not inquire at all?

14 A No, I did not.

15 Q And we talked previously about the actual
16 agreements for these services, and we -- and we don't
17 know where we are with respect to that dispute about
18 whether or not --

19 MR. CASH: Well, on this -- on this question
20 I can't answer, because it's got three ands
21 instead of ors. It says: Agreements to provide
22 bankruptcy, foreclosure, servicing, data --
23 sorry, I'll slow down -- data, etc., services of
24 any nature between any defendants or any other
25 vendors who provide any services for a fee with

1 respect to the borrower's loan and, all caps, who
2 paid a fee for said services and, all caps, those
3 fees were charged to the borrower's loan.

4 Our response to that would be none, because
5 our fees aren't charged to the borrower's loan.
6 We have no agreements --

7 THE WITNESS: Correct.

8 MR. CASH: -- that would indicate the
9 borrower should ever be charged our fees. So we
10 would have no agreements that would fall under
11 that category.

12 If that last "and" wasn't there, those would
13 be the contracts that we're talking about.

14 MR. WOOTEN: Sure. But with respect to
15 those contracts, I guess what I'm trying to
16 clarify is, is that at this point, we don't have
17 an agreement about producing those because,
18 obviously, y'all don't want to give those up
19 without being forced to or having a
20 confidentiality agreement.

21 MR. CASH: Right.

22 MR. WOOTEN: So, that's what I'm trying to
23 clarify.

24 MR. CASH: Right. And frankly, Nick, I'll
25 be honest with you, that may not be true. If we

1 can agree to some redaction of very proprietary
2 stuff, specific fee things that we have with --
3 you know, so that we're not giving up what our
4 fee structure is to our competitors --

5 MR. WOOTEN: And I'll --

6 MR. CASH: -- we may be able to give you the
7 general --

8 MR. WOOTEN: And I will say that I'm much
9 more concerned about the concept of how those
10 fees are passed along more so than how you
11 structure your fees.

12 MR. CASH: Okay.

13 MR. WOOTEN: So there might be a way that we
14 can look at that together and agree.

15 MR. CASH: Okay. Okay.

16 MR. WOOTEN: I really don't care how you pay
17 the folks that work for you.

18 MR. CASH: Right.

19 MR. WOOTEN: That's y'all's business.

20 MR. CASH: Okay.

21 MR. WOOTEN: What I'm concerned about is if
22 things are marked up and added on and then passed
23 on to a consumer.

24 MR. CASH: Absolutely. I understand that.

25 MR. WOOTEN: So that's my bigger concern

1 there. And we're off to Exhibit 2.

2 (Plaintiffs' Exhibit No. 2 marked for
3 identification.)

4 BY MR. WOOTEN:

5 Q I'm going to show you a document,
6 Mr. Newland, I've marked previously as Plaintiffs'
7 Exhibit 2, and ask you if you -- I'll represent to
8 you, I'm sorry, that that is a copy of the Complaint
9 that was filed originally in this action with respect
10 to my clients, the Woods, and I'll ask you if you
11 reviewed that complaint at all prior to coming here
12 today?

13 A Yes, I have.

14 Q So you've familiarized yourself with the
15 allegations made in the complaint, correct?

16 A Uh-huh.

17 Q All right. That's fine. I just wanted to
18 make sure that you had had a chance to take a look at
19 that.

20 Now, you indicated at the beginning of your
21 deposition that you were familiar with the litigation
22 and you had actually provided an affidavit as support
23 for a motion that had been filed in the case; is that
24 correct?

25 A Yes.

1 Q And that was filed by your Alabama attorneys
2 with Huie Fernambucq? And I'll let you read that, I
3 won't try to spell it for you. I can't even spell it.

4 I want to go over a couple of things with
5 you --

6 A Sure.

7 Q -- from your affidavit, and areas have been
8 highlighted with respect to the situation. If you
9 want to take a moment and look through that, and I'll
10 come back and ask you some questions about it. Or --

11 A Which portion of it? All of it or which
12 portion?

13 (Plaintiffs' Exhibit No. 3 marked for
14 identification.)

15 MR. WOOTEN: Mike, do you have a copy of his
16 affidavit?

17 MR. CASH: Yeah, I'm looking right now,
18 trying to find it, because I'm pretty sure I do.
19 Yes, I do.

20 BY MR. WOOTEN:

21 Q Well, that's fine. If you want to, you can
22 take a look at Mike's copy and just hand me back that
23 one I've highlighted, and I'll ask you questions.
24 That'll make us move a little bit faster.

25 Beginning at the Paragraph No. 3 -- tell me

1 when you're there -- with respect to your affidavit
2 now.

3 A Uh-huh.

4 Q You indicate that Fidelity, which we've
5 already talked about in this case, talking about
6 LPS --

7 A LPS Default Solutions.

8 Q -- manages data and communications within
9 its proprietary technology in foreclosure and
10 bankruptcy cases, enabling servicers and servicers'
11 law firms to efficiently and effectively manage
12 mortgage loans in default.

13 A That's correct.

14 Q And then in Paragraph 4, you indicate that
15 the services and technology included monitoring the
16 status of legal actions, tracking action items, and
17 providing reports to Option One, by LPS Default
18 Solutions, in regard to the Woods' loan.

19 A That's correct.

20 Q And you indicated that those services did
21 not include selecting a law firm to represent Option
22 One or determining what they should do with respect to
23 that loan?

24 A That's correct.

25 Q And then in Paragraph 6, you indicated that

1 LPS Default Solutions did not select, hire, or retain
2 Scott Humphrey.

3 A That's correct.

4 Q You indicated that decision was made by
5 Option One, right?

6 A That is correct.

7 Q In Paragraph 7, you indicated from reading
8 our complaint that your Process Management notes do
9 not show any charges or fees from Fidelity.

10 A That's right.

11 Q Are there other places within software
12 services that LPS Default Solutions uses which might
13 indicate that there were fees charged from Fidelity,
14 or from LPS Default Solutions?

15 A No.

16 Q So nowhere in the MSP software would it
17 indicate that there were fees which were charged which
18 should be ultimately paid to LPS Default Solutions?

19 A No, we don't charge fees to the customers.
20 (Brief interruption.)

21 THE WITNESS: To the customers.

22 BY MR. WOOTEN:

23 Q In Paragraph 8, second sentence, you
24 indicated that LPS Default Solutions has not received
25 any moneys from Option One for services performed

1 regarding plaintiffs' mortgage loan.

2 A That is correct.

3 Q Now, are you speaking generally about any
4 payment at all from Option One, are you talking about
5 specifically the services provided regarding this
6 foreclosure that took place?

7 A Specifically.

8 Q Okay. So we're dealing with -- your
9 testimony is that for the support and services that
10 you provide regarding a foreclosure, that Option One
11 does not pay you any money?

12 A That is correct.

13 Q Now, with respect to Scott Humphrey, he pays
14 you a referral fee for having this loan come to him
15 through the referral network of LPS Default Solutions?

16 A He does not pay a referral fee, he pays an
17 administrative support fee.

18 Q Okay. Tell me what the administrative
19 support fee is.

20 A Basically to help maintain the information
21 within the system of record.

22 Q Okay. And what is the fee?

23 A I don't know off the top of my head what
24 the -- you're talking about the exact amount of the
25 fee?

1 Q Well, how is that fee derived? I mean, is
2 it a percentage or is it a set dollar amount, or how
3 do you arrive at that fee?

4 A It's a dollar amount that's determined by
5 our executives, I believe.

6 Q Okay. Is it based on the dollar value of
7 the loan or is it --

8 A No.

9 Q -- based on the service to be provided?

10 A It's -- it's a flat fee.

11 Q Okay. Do you know if Mr. Humphrey would
12 have added the amount of that support fee to the
13 attorney fees which he billed to Option One?

14 A I don't know.

15 Q Do you know if your agreement with
16 Mr. Humphrey's firm required him to perform the
17 foreclosure services for a set fee?

18 A Yes. I mean, it's all basically relative to
19 the fees that are incurred, that are set forth by the
20 client.

21 Q All right. And when you say they're set
22 forth by the client, there actually is a fee structure
23 for these types of services. And this is a
24 generalization, Mike, but even with respect to
25 bankruptcies and foreclosures, most of those

1 guidelines come from either the government sponsored
2 enterprises or some entity like that, right?

3 A That is my understanding.

4 (Brief interruption.)

5 THE WITNESS: That is my understanding.

6 MR. WOOTEN: Whose phone? Oh.

7 THE VIDEOGRAPHER: I'm sorry.

8 MR. WOOTEN: Oh, okay. I was just making
9 sure nobody was getting us.

10 BY MR. WOOTEN:

11 Q But in general, the fee for a foreclosure is
12 more or less governed by those entities that had
13 dominated the market for so long, Fannie and Freddie;
14 is that correct?

15 A That would be my understanding, that the fee
16 structures are set forth based off of those
17 assessments, and then the clients make the
18 determination as to whether they're going to look at
19 those fee structures or not.

20 Q Do you know if the contract between Scott
21 Humphrey and LPS Default Solutions required him to
22 submit his invoices through your Invoice Management
23 system?

24 A I don't know. I don't know.

25 Q So that is something that we cannot

1 ascertain without looking at the actual agreement?

2 A That would be my understanding.

3 Q Okay. All right. Do you know if the
4 contract between Option One and LPS Default Solutions
5 required that they communicate with the foreclosure
6 attorney through the document or the process solutions
7 portion of your business, Process Management?

8 A Yes, they are required to go through Process
9 Management with their information.

10 Q Okay.

11 A As far as the updating events and requesting
12 of certain documents, those things.

13 Q So is it your understanding that as between
14 the contract between LPS Default Solutions and Option
15 One, and LPS Default Solutions and Scott Humphrey,
16 that between the covenants in those agreements, Scott
17 Humphrey could not go directly to Option One and say,
18 pay my fee?

19 A I don't know the answer to that question.
20 I -- Scott Humphrey could always go and request, if he
21 wanted to, through Option One, I just don't know.

22 Q Okay. So without seeing the agreement, you
23 don't know if he was required to submit invoices
24 through LPS Default Solutions and that they were
25 required to pay the invoices that he submitted through

1 LPS Default Solutions?

2 A That would be correct.

3 Q Is not a portion of the benefit of the
4 bargain that your company provides that the servicers,
5 such as Option One, know what they will pay for these
6 services which are provided by the network attorneys?

7 A Run that by me again.

8 Q Okay. Part of the benefit that LPS Default
9 Solutions provides to a servicer is that a servicer
10 knows that they can get an LPS network attorney who's
11 going to provide services for a certain fee. Is that
12 part of the benefits you provide?

13 A They -- they basically choose the attorney,
14 so it's up to them to make that decision.

15 Q I didn't say that they didn't.

16 A Okay.

17 Q What I'm saying is, is that with respect to
18 your network attorneys, you can truthfully state to
19 any servicer, including Option One, that your network
20 attorneys are going to provide services for a certain
21 fee?

22 A That is correct.

23 Q And that's because of the agreement you have
24 with the network attorney?

25 A We have an agreement with the attorneys.

1 Q Right. Okay.

2 A But then again, Option One can utilize any
3 attorney that they wish.

4 Q I understand.

5 A Okay.

6 Q I'm just saying that part of the benefit
7 that you're providing is that Option One, who's a
8 California corporation, can hire an attorney who's an
9 LPS Default Solutions network attorney in Alabama to
10 go to DeKalb County and foreclose without having to
11 prequalify them in any way, they know what those costs
12 are going to be?

13 A That's -- that's strictly up to the client.

14 Q My question is much more esoteric than that,
15 really. I know -- I understand what you're saying.

16 A Okay.

17 Q I'm just saying that when you go out and
18 shop your services to a servicer, like Option One,
19 you're telling them that you provide a national
20 network of attorneys who will perform services for a
21 fixed amount of money, depending on what service
22 they're providing, don't you?

23 A As far as the service provided, we basically
24 go out and discuss what attorneys we have within our
25 network, but all clients have the ability to choose

1 any attorney they wish to choose and utilize that they
2 want, period.

3 Q Sure. Again, I understand that answer.

4 A Okay.

5 Q And -- but my question is much more general.
6 What I'm saying to you is, is because Option One has
7 made this contract with LPS Default Solutions, that
8 they know that if they upload a foreclosure and it is
9 sent to a network attorney, that attorney is going to
10 perform those services for a set fee?

11 A Determined by the client, yes.

12 Q Okay. And so, you ask them in their
13 agreements to set those fees that they will pay,
14 right?

15 A Yes, we do.

16 Q And is it your testimony, again, that fee
17 structure more or less comes straight from Fannie and
18 Freddie and the government sponsored enterprises,
19 right?

20 A The clients utilize that.

21 Q And most clients don't deviate from that, do
22 they?

23 A I don't know.

24 THE VIDEOGRAPHER: Excuse me. Need to
25 change tape.

1 MR. WOOTEN: Need another tape? Sure.

2 THE VIDEOGRAPHER: Off record at 12:23.

3 (Off the record discussion.)

4 (Lunch break.)

5 THE VIDEOGRAPHER: Back on record at 1:05,
6 beginning of Videotape No. 4.

7 BY MR. WOOTEN:

8 Q Mr. Newland, when we left off, we were
9 talking about Paragraph No. 8 of your affidavit. You
10 said that Fidelity has not received any moneys from
11 Option One for services performed regarding
12 plaintiffs' mortgage loan. We established that what
13 you were referring to there specifically were the
14 default services which were provided by LPS Default
15 Solutions with respect to the foreclosure case?

16 A Uh-huh.

17 Q And you indicated that Fidelity does not pay
18 LPS Default Solutions any money for the work it does
19 with respect to a foreclosure?

20 A Fidelity does not pay --

21 Q I'm sorry. Option One does not pay --

22 A That's correct.

23 Q -- LPS Default Solutions any money?

24 A That's correct.

25 Q You did indicate that LPS Default Solutions

1 charges an administrative support fee to the attorney
2 who is the network attorney assigned to the
3 foreclosure?

4 A Yes.

5 Q What we were trying to establish at the
6 point in time we had to take that break was how is
7 that fee determined, and I think you indicated that it
8 was a flat fee?

9 A Yes.

10 Q And that it was -- is it based upon the fee
11 that the attorney charges, or is it --

12 A No.

13 Q -- based upon some other factor?

14 A It's just based on the services we provide
15 with the attorney.

16 Q Okay. And so is there a fee for separate
17 services which LPS Default Solutions provides?

18 A No. We're contracted with the attorney.

19 Q So every fee which LPS Default Solutions
20 charges would be contained in the agreement between
21 LPS and Scott Humphrey?

22 A That's correct.

23 Q And every fee or payment due from Option One
24 to LPS Default Solutions would also be contained
25 within the contract that was executed between those

1 parties?

2 A There's no fee between Option One and LPS.

3 Q Never under any circumstances?

4 A No.

5 Q With respect to the remaining allegations of
6 that paragraph, it is your testimony that LPS Default
7 Solutions does not provide payoff figures to a
8 plaintiff or to a party who is in foreclosure?

9 A No, we do not provide the payoff figures to
10 the customers -- or the plaintiff.

11 Q And that is not just with respect to my
12 clients, the Woods, but with respect to your entire
13 business model?

14 A That is correct.

15 Q And if the Woods were to have contacted LPS
16 Default Solutions and requested verification of an
17 amount owed, your testimony is, is that LPS Default
18 Solutions would not have that information?

19 A No, we would not -- we would not discuss the
20 information with the customer, we would refer the
21 customer back to either the attorney and/or the
22 client, which would be Option One in this case.

23 Q And your testimony is, is that LPS Default
24 Solutions does not engage in any collection efforts
25 with -- is that generally or with respect only to my

1 client's loan?

2 A Generally. We do not discuss anything with
3 any customer.

4 Q So no one from LPS Default Solutions in
5 either Mankato, Minnesota, or, Jacksonville, Florida,
6 ever calls a mortgage borrower who is in foreclosure
7 about collecting on the amount that's owed with
8 respect to the foreclosure?

9 A Absolutely not.

10 Q And it's your testimony that LPS does not
11 provide any information to any credit bureau?

12 A Absolutely not.

13 Q If Scott Humphrey uploaded an invoice for
14 services into the document or the -- I'm sorry,
15 Process Management database -- actually, that would go
16 into your invoicing system, wouldn't it?

17 A That is correct.

18 Q Would he make an entry with respect to the
19 amounts of the -- those attorney's fees?

20 A He typically would.

21 Q And would he provide in addition to the
22 invoice any images which supported those charges?

23 A In most cases the attorney would.

24 Q With respect to this loan, did that occur?

25 A I don't know. I know there was invoices

1 uploaded, but I do not know if those -- if there was
2 copies of anything behind those.

3 Q Is it your testimony that LPS Default
4 Solutions does not increase the amount billed to any
5 consumer for any charge or service provided during the
6 time that it manages the foreclosure process?

7 A That's correct, we do not.

8 Q Does LPS Default Solutions have any
9 agreement with any provider of services who does
10 charge a fee to a consumer in the foreclosure process
11 whereby that fee is shared with LPS Default Solutions?

12 A No.

13 Q And your testimony is that never happens,
14 not with respect to any fee, including any attorney's
15 fee?

16 A No.

17 Q Does Fidelity charge to Option One -- I'm
18 sorry.

19 Does LPS Default Solutions charge to Option
20 One any amount of money at any time for referring a
21 foreclosure file for foreclosure services through the
22 LPS Default Solutions platform?

23 A No.

24 Q Does it receive any remuneration of any type
25 from any source for Option One uploading a foreclosure

1 to LPS Default Solutions?

2 A No.

3 Q So I just want to be sure. What you're
4 testifying to is that there is no compensation ever
5 paid by the servicer to LPS Default Solutions for all
6 this work that it does on behalf of the servicer with
7 respect to the foreclosure?

8 A No.

9 Q There is compensation or there is not
10 compensation?

11 A No, there's no compensation.

12 Q Is it your testimony then that the only fees
13 which LPS Default Solutions collects with respect to
14 the foreclosure of any given loan is the
15 administrative support fee charged to the network
16 attorneys?

17 A Yes.

18 Q And the division of LPS Default Solutions
19 which we are here about today and which you are
20 testifying as a 30(b)(6) representative, the only
21 source of income it derives for its work with respect
22 to foreclosure is the administrative support fee?

23 A That's my understanding.

24 Q Other than the administrative support fee,
25 does it charge a fee for accessing documents on the

1 new document system?

2 A No.

3 Q So your testimony today is that the only
4 compensation of any type, of any nature, paid to LPS
5 Default Solutions is the administrative support fee,
6 and it funds all of the activities and makes all the
7 profit, pays all the overhead of LPS Default
8 Solutions?

9 A That's my understanding, for the third time.

10 Q Paragraph 11 of your affidavit says that LPS
11 Default Solutions has no record of receiving any
12 portion of funds received from any foreclosure of
13 plaintiffs' mortgage?

14 A That is correct.

15 Q And is that comment based upon the contents
16 of the Process Management system?

17 A Yes.

18 Q And it is your testimony that your employees
19 do have access to MSP as a portion of the work that
20 they do, correct?

21 A They have access to certain screens within
22 MSP, correct.

23 Q Would that be the foreclosure screens within
24 MSP?

25 A It would be access to limited amounts of the

1 foreclosure workstations.

2 Q The next sentence of that affidavit says
3 that Fidelity, or LPS Default Solutions, did not
4 initiate foreclosure proceedings regarding the Woods'
5 mortgage.

6 A That is correct.

7 Q And that there was no direct contact with
8 the plaintiffs regarding their mortgage account.

9 A That is correct.

10 Q I'm going to just pull off these pages,
11 there's 25 pages here, they're Process Management
12 notes that are part of the cumulative Exhibit No. 24
13 in this case.

14 A Uh-huh.

15 Q This is, according to you, Mr. Newland, all
16 of the Process Management notes for this loan; is that
17 correct?

18 A That is correct.

19 Q Does this represent every entry of
20 information regarding the Woods' mortgage loan on the
21 LPS Default Solutions Process Management platform?

22 A That is correct.

23 Q So this is actually organized in a reverse
24 chronological fashion, correct?

25 A That's correct.

1 Q So if we want to start at the beginning, we
2 really should turn over to the last page, which is
3 No. 157, right?

4 A Uh-huh.

5 Q And No. 157, that says written by. What
6 does written by mean with respect to that entry?

7 A That's who entered in the transaction.

8 Q And who did that in this case?

9 A It was basically done through an auto
10 process.

11 Q Whose auto process?

12 A Our auto process.

13 Q LPS's, right?

14 A That's correct.

15 Q And then entry No. 156 says what?

16 A It says a foreclosure, NIE ID No. 3550946,
17 was sent to Scott Humphrey at 6 -- on June 1st, 2007
18 at 9:07:50 a.m. by an automated task.

19 Q And that was also done by LPS Default
20 Solutions automated process?

21 A That's correct.

22 Q And the NIE ID number is, in fact, a New
23 Image ID number which would identify the documents
24 which were sent to Scott Humphrey on June 1st, 2007,
25 correct?

1 A That is correct.

2 Q Document No -- or entry No. 154, please tell
3 me to the best of your understanding what that entry
4 indicates.

5 A Basically it's an entry: Process opened
6 June 1st, 2007, by user Fidelity AutoProc, process is
7 basically to obtain any type of imaged docs that are
8 currently out there.

9 Q Where would those imaged docs be located?

10 A Could be possibly located in the imaging
11 system for Option One Mortgage.

12 Q Okay. And I thought we just talked about
13 the fact that your folks didn't mess with Option One's
14 data. Didn't you testify that --

15 A Well, this is --

16 Q -- LPS --

17 A This actually -- this actually is an event
18 that's worked by the client, not by us.

19 Q But --

20 A We just -- the process was just
21 automatically opened, auto opened for the client to
22 basically look into their imaging system to see if any
23 other docs were available for referral.

24 Q So whenever it says --

25 A OS.

1 Q -- written by at the top, whatever the entry
2 is there would tell us --

3 A Who opened the process.

4 Q -- who did it and what company, right?

5 A Yes.

6 Q Okay. And so, what you're saying is, is
7 that after your company automatically processed a
8 foreclosure and sent it out to Scott Humphrey, that it
9 then went out and sought whatever image documents that
10 Option One might have?

11 A This is based on the client. Client has set
12 this process up. All we are is the facilitator for
13 the opening of that process for the client.

14 Q It doesn't say that Option One did this
15 though, does it?

16 A No, but we're contracted by Option One to
17 facilitate the opening of this process.

18 Q Sure.

19 A That's their request.

20 Q And you agree with me that that is done by
21 your system and your company?

22 A Yes, it's done by our system.

23 Q Entry No. 153, later that same day, appears
24 to be the entry where Scott Humphrey received that
25 file?

1 A That's correct.

2 Q And then 152 is another automated process by
3 your company indicating -- acknowledging the time
4 which Scott Humphrey picked up these -- this
5 foreclosure and who within his office picked it up,
6 correct?

7 A Yes.

8 Q And then entry No. 151 appears to be an
9 Option One Mortgage Company entry; is that right?

10 A That's correct.

11 Q And does it indicate what images were
12 provided by Option One in that entry?

13 A That's correct.

14 Q And that indicates that there was a note and
15 a HUD and an RSI. Do you know what that is?

16 A No, I do not. Probably a recorded security
17 instrument, is probably what it stands for.

18 Q All right.

19 A Stipulated up in No. 150. If you look up at
20 150, there you go.

21 Q All right. Gotcha. And do you know what
22 NOI is?

23 A Notice -- notice of intent.

24 Q Is that -- the notice of intent, is that the
25 letter notifying the client of the intention to

1 foreclose?

2 A That's my understanding.

3 Q And then the MB NOI, what -- what does that
4 mean?

5 A I don't know what the MB -- what that stands
6 for.

7 Q And then, as we just talked about, the next
8 entry, 150, indicates the actual documents which
9 Option One Mortgage company --

10 A Identified.

11 Q -- identified, right?

12 A Uh-huh.

13 Q And then Entry 149 indicates that this same
14 user for Option One provided the imaged docs to the
15 attorney that same date?

16 A Yeah, that's completion of the event.

17 (Brief interruption.)

18 THE WITNESS: Completion of the event.

19 BY MR. WOOTEN:

20 Q And the Entry No. 147, apparently, at the
21 top of that page is another automated process where
22 your system updates that that has been sent to Scott
23 Humphrey?

24 A That Scott Humphrey picked up the documents.

25 Q And the Entries 145 and 144 are again

1 automated entries by your company --

2 A Yes.

3 Q -- is that correct?

4 A It's basically where the documents were
5 picked up in New Image at that time, which is an
6 imaging platform, and it's also time stamped when they
7 pick them up through that system also back into
8 Process Management, so we basically have dual entries.

9 Q Have you ever looked at the New Image
10 software from the attorney side? Are you familiar
11 with whether they have to go through authorization or
12 commitment screens or anything like that to pick up
13 these documents?

14 A No, I have not.

15 Q So you don't have any idea?

16 A No. I know they're picked up through the
17 user IDs. We have user IDs for all three systems.

18 Q Is a user ID the same for all three systems?

19 A You can have the same log-in for all three
20 systems presently now.

21 Q I'm sorry, at the present time --

22 A At the present time.

23 Q -- they have a different log-in for each
24 system?

25 A I don't recall --

1 MR. CASH: I'm going to instruct you not to
2 answer that. We're getting into proprietary --

3 THE WITNESS: Okay.

4 MR. CASH: -- security stuff that has
5 nothing to do with this lawsuit. So, objection,
6 relevance. Instruct you not to answer. Also
7 objection, proprietary.

8 BY MR. WOOTEN:

9 Q On the entry that begins at the top of
10 Page 23 of those documents, right above 140, but it's
11 actually entry No. 139, which carries over onto
12 Page 22, it indicates that Karen Singleton with Scott
13 Humphrey's office completed the F119 Attorney Fees
14 Owed data form with the following entries, amount
15 outstanding \$1300 estimated only. That information
16 would have been provided to Fidelity -- or to LPS
17 Default Solutions at that time?

18 A Yeah, that was completed by Karen Singleton
19 in Scott Humphrey's office for, in this case, it
20 would've been the bid process, which it was basically
21 stating what they believe the fees would be for the
22 bid.

23 Q And then at Page 1 -- or Entry 136, you have
24 an issue crop up.

25 A Uh-huh.

1 Q And this is 6/18 of 2007. Does that
2 indicate that the house had burned to the ground and
3 there was an insurance claim?

4 A Yes, that the house had burned.

5 Q And that the mortgage was supposed to have
6 been paid in full?

7 A Yes.

8 Q And does this indicate that the property
9 actually belongs to this gentleman who called in, a
10 Mr. Steele?

11 A It says that this land is -- that this is
12 the land that Mr. Steele and his sister inherited from
13 their parents.

14 Q And the last sentence says: But he did want
15 us to inform client that there is nothing that belongs
16 to the mortgagee, because the property actually
17 belongs to him, Mr. Steele?

18 A That's correct, that's what's stated in it.

19 Q Who would this -- this issue would have gone
20 back to your company, correct?

21 A That's correct.

22 Q And when this issue went back to LPS, it
23 would've been your company's voluntary undertaking to
24 determine what Option One wished to do about this
25 issue, right?

1 A No, we brought the issue to Option One's
2 attention. As you can see in the note that's just
3 above it, in 134, on June 18th at 5:06 p.m.

4 Q And it's -- and this involves Brandi Smith,
5 who is a Fidelity employee?

6 A That's correct.

7 Q And Ann Russo, who is an Option One Mortgage
8 Company employee, right?

9 A That's correct.

10 Q Does Brandi Smith work in Jacksonville or
11 does she work in Mankato?

12 A Off the top of my head, I don't -- I don't
13 know which location she works at. She may even be one
14 of our work-at-home representatives.

15 Q Is there any way to tell from her entry --

16 A Which location she is?

17 Q -- where her location is?

18 A No.

19 Q Now, ultimately asked the question of this
20 lady at Option One as to whether or not her office has
21 any information regarding an insurance claim or action
22 on the property, right?

23 A I'm sorry, repeat that again.

24 Q At the bottom, the last sentence of Entry
25 134, it appears that your employee, Brandi Smith,

1 asked Ann Russo if her office had any info regarding a
2 possible insurance claim or action on this property?

3 A That's correct.

4 Q What is the APR score or ranking with
5 respect to your foreclosure attorneys?

6 A What is the APR ranking?

7 Q Or score, attorney performance review or
8 attorney performance ranking, APR?

9 A Uh-huh.

10 Q What is that?

11 A It's a scoring mechanism we utilize to show
12 where the attorneys are performing in relation to the
13 other attorneys within the state.

14 Q Within the state?

15 A Yes.

16 Q Does that extend at all beyond the state to
17 the region or to the country?

18 A Well, there are service levels that are also
19 in the national.

20 Q And how is that APR measured?

21 MR. CASH: I have a better question. How is
22 that relevant to this lawsuit?

23 MR. WOOTEN: It's relevant to this lawsuit,
24 Mike, because what you will learn about the APR
25 ranking is that it requires the attorneys to

1 perform certain tasks and certain --

2 MR. CASH: Trust me, I know all about the
3 APR ranking.

4 MR. WOOTEN: And the reason it's relevant
5 is, is they are basically put in a position to
6 rush to get through these projects without being
7 concerned about accuracy. So I'd like for the
8 Court to understand what the APR is and why it
9 affects the network attorneys.

10 MR. CASH: So it's your allegation in this
11 case that the problem was rushed because of the
12 APR? That -- I mean, if that's your allegation,
13 that's fine.

14 MR. WOOTEN: It is -- my allegation, it is a
15 factor contributing to mistakes that were made.

16 MR. CASH: Go ahead and answer.

17 THE WITNESS: Can you repeat the question
18 one more time, please.

19 BY MR. WOOTEN:

20 Q Sure. What I'm looking for, Mr. Newland, is
21 an explanation so that the Court may understand what
22 the APR ranking is and how it translates to the
23 business model that your company employs. And you
24 indicated that it is a scoring mechanism that ranks an
25 attorney's performance vis-a-vis the performance of

1 other attorneys within a state.

2 So is that to be assumed from that response
3 that a higher APR ranking means that that attorney, by
4 your measure, is doing better than a lower APR
5 ranking?

6 A They could be performing better, yes.

7 Q Okay. And how do you determine the APR
8 ranking of a given attorney?

9 A The APR ranking is based off of the
10 completion of events that are within the APR scoring
11 module. These events are based off the data that's
12 inputted by the attorneys, then it's compared against
13 their peers within that state, based off of days to
14 complete the actions.

15 Q So, for instance, there is a recommended
16 time frame from delivery of a foreclosure referral to
17 completion of the foreclosure sale, correct?

18 A There is a time frame, yes.

19 Q What is that time frame, sir?

20 A Time frame for the state of Alabama?

21 Q Uh-huh.

22 A I believe it's 90 days.

23 Q And that is from, in this case, June 1st of
24 2007, which -- when it was opened and sent to Scott
25 Humphrey, until the sale is complete?

1 A That's correct.

2 Q And your APR measures how the attorney does
3 in completing these events within those time frames,
4 correct?

5 A That's correct.

6 Q And so, that is based entirely upon the data
7 which is entered in the Process Management system,
8 correct?

9 A Yes.

10 Q And I'm assuming that there is a reporting
11 function within the Process Management system which
12 tracks these key events for each of these attorneys?

13 A Yes, there is.

14 Q Other than the time to complete the
15 foreclosure sale from beginning to end, what other
16 measures does your firm employ with respect to your
17 network attorneys who are engaged in foreclosure
18 practice?

19 A What other measurements as far as the APR?
20 We also measure service levels.

21 Q When you indicate service levels, can you
22 explain that for me?

23 A Sure. How often do they complete their
24 re-projections on time.

25 Q A re-projection is when a date has to be

1 refigured?

2 A When -- yeah, when an event comes due, they
3 need to go in and basically tell us what the reasoning
4 is behind not being able to complete that event and
5 then we will approve off on the re-projection. Then
6 there's also service levels for fees and costs that
7 are incurred for the basically completion of the fees
8 and costs.

9 Q Is that for the form F119 we mentioned
10 earlier?

11 A Not necessarily that. There's a fees and
12 costs module within Process Management that is
13 measured by when the attorney -- when we send out a
14 fees and costs request from the clients, how quickly
15 do they complete those fees and costs for the client.

16 Q And does that require an exact cost or an
17 estimated cost?

18 A There could be -- it depends on the client,
19 but it could be two different areas. It could be
20 exact cost and/or possibility of future costs,
21 depending on the good through date.

22 Q With respect to this measure of APR, are
23 there any other factors for an attorney engaging in
24 foreclosure practice as an LPS Default Solutions
25 network attorney which are considered?

1 A No.

2 Q So the APR consists of how fast they
3 complete the initial assignment; if the assignment is
4 reprojected, whether they complete it on time; and
5 whether they respond to a request for costs in a
6 timely fashion?

7 A That is correct.

8 Q And that is the entire basis of the APR for
9 attorneys in Alabama who are network attorneys?

10 A Short version.

11 Q Okay. When you say "short version" --

12 A Just condensing, I mean.

13 Q Sure. I'm assuming that -- are there other
14 measures under each of these three main headings?

15 A No.

16 Q Is there a financial incentive to be one of
17 the top APR firms in a given state?

18 A No, there is not.

19 Q Is it your testimony that your company does
20 not pay bonuses to attorneys who are considered to be
21 the highest performers in a given state?

22 A Yes, it is my testimony.

23 Q Is there any other non-monetary incentive to
24 be one of the highest ranking attorneys within the
25 state of Alabama?

1 A No, there's not.

2 Q There is not?

3 A No. Monetary, no.

4 Q Are there any non-monetary incentives?

5 A No.

6 Q Do you award trips or --

7 A No.

8 Q -- prizes?

9 A Absolutely not.

10 Q Does Process Management import any
11 information regarding a loan account at the beginning
12 of a foreclosure process from MSP or any other source
13 from the servicer?

14 A We do receive information when we do receive
15 the referral from, in this case, Option One Mortgage,
16 as to the unpaid principal balance, address, name,
17 let's see, last payment date. We do receive that
18 information. And that's from MSP.

19 Q You said the unpaid principal balance, the
20 address and what else?

21 A Last payment date, customer's name, address.

22 Q Is there a name for this batch of
23 information which is received from MSP with respect to
24 a referred --

25 A I don't know what the batch name is.

1 Q -- account? I'm sorry, you don't know what
2 the batch --

3 A You're asking for a batch name?

4 Q Yeah, do y'all have something you call it
5 when you get this information?

6 A Just loan information.

7 Q Does this loan information provide you with
8 the balance of any escrow corporate advance or
9 suspense accounts at the time a case is referred to
10 LPS for foreclosure?

11 A Not in Process Management, no.

12 Q Does that information come from some other
13 source?

14 A It's provided to the attorneys through
15 basically a screen scrape program that we have for
16 the --

17 Q I'm sorry, you said screen what?

18 A We have a -- the ability to go out and
19 capture the screen and provide that to the attorney
20 for the information that they need to provide for
21 their financial figures.

22 Q Did you refer to that as a screen scrape?

23 A Yeah, basically all you're doing is pulling
24 the information out and basically just sending a
25 snapshot of the screen, which there's screen shots

1 right there for you in that package.

2 Q So sort of like this document --

3 A Yeah.

4 Q -- I showed you earlier?

5 A Similar to that, yes.

6 Q Exhibit 9. That would be a screen scrape,
7 is your term?

8 A That would be a snapshot.

9 Q Okay. Entry No. 125, June 19th of 2007?

10 A Uh-huh.

11 Q Is Vicki Shelley an LPS Default Solutions
12 employee?

13 A Yes, she is.

14 Q And does that indicate that she has
15 submitted a bid to the client for approval and that
16 there is a restricted escrow balance greater than
17 \$5,000?

18 A That's correct.

19 Q And she is privy to all of the issues and
20 comments prior to this date with respect to the fact
21 that there is an insurance claim on this case,
22 correct?

23 A She's privy to the information; I don't know
24 whether she went back and checked to see that.

25 Q There's no indication there that she knows

1 what the restricted escrow balance is, other than it
2 is greater than \$5,000, right?

3 A That's correct.

4 Q Do you know, as you sit here today, if that
5 information would have been available to her to
6 indicate that there was \$138,000 in a restricted
7 escrow account on that day?

8 A I don't know.

9 Q Is it your testimony that LPS Default
10 Solutions does not have the authority to cause funds
11 which are in any escrow or suspense account to be
12 applied to a mortgage loan --

13 A That is correct.

14 Q -- during the foreclosure process?

15 A That is correct, we have no ability to
16 process those funds at all.

17 Q You are hired by Option One Mortgage Company
18 in this case because your firm provides specialty
19 services with respect to foreclosure, correct?

20 A Yes.

21 Q And you market yourself as an entity with
22 particular expertise with respect to foreclosure and
23 default issues, correct?

24 A Managing foreclosure processes, yes.

25 Q Sure. And you market yourself as having

1 particular expertise in that field, correct?

2 MR. CASH: Which field?

3 BY MR. WOOTEN:

4 Q Default solutions, foreclosure, bankruptcy,
5 foreclosure management?

6 MR. CASH: Object to the question as
7 multivarious.

8 BY MR. WOOTEN:

9 Q Your firm, LPS Default Solutions, only
10 provides services with respect to loans that are in
11 bankruptcy or foreclosure, correct?

12 A That is correct.

13 Q That is the specialty of your firm, is it
14 not?

15 A Yes, it is.

16 Q Would it be reasonable for your firm to
17 inquire as to why there was an escrow balance greater
18 than \$5,000 when your firm's notes indicated that an
19 insurance claim had paid this mortgage off?

20 A Basically -- based on the bid, we sent this
21 over to the client for approval, which has the
22 necessary information that says it is above a certain
23 balance. And with our policies and procedures that
24 have been dictated down to us by the client, we
25 requested this go to the client for this approval for

1 the bid, which at that time, the responsibility of the
2 client is to review this and provide us with their
3 approval for the bid amount.

4 Q Okay. So your testimony is that no matter
5 what's in that balance of that escrow account, you're
6 going to just send this bid on to the client and do
7 whatever they tell you to do, right?

8 A That is correct.

9 Q Even if the amount in escrow would pay off
10 the principal balance of the mortgage?

11 A I don't know if that's the payoff or not,
12 sir.

13 Q Well, we'll come back to that in a minute.
14 But let's assume for a minute that the principal
15 balance of the loan is less than \$137,000.

16 A I'm not going to assume that though.

17 Q Okay. All right. What I'm doing is asking
18 you to assume, I'll show you the documents in a
19 minute, but if the -- if the principal balance of the
20 loan was less than \$137,000 and the restricted escrow
21 contained more than \$138,000, would it not have been
22 prudent, as the specialist in this area, to notify
23 this client that there were funds which would have
24 satisfied the principal balance of this mortgage?

25 A Well, we've already notified the client

1 previously. If you would've read in the previous note
2 back, I believe it was, like in the 150s, we did
3 notify the client that there was an issue. Second of
4 all, if you notice in this line No. 125, based on the
5 policies and procedures that have been dictated down
6 to us by the client, any restricted escrow balance
7 greater than 5,000 needs to be sent to the client for
8 approval.

9 So, we followed our direction and provided
10 that to the client. That's what I'm testifying to.

11 Q Have you provided myself and my co-counsel
12 with all of these guidelines and directives which you
13 have received from Option One with respect to how your
14 firm should conduct foreclosures on behalf of Option
15 One?

16 MR. CASH: I can speak to that. It's my
17 understanding that we have offered to do so,
18 subject to entry into a confidentiality
19 agreement. And at this point, there's been no
20 agreement to keep those confidential, which
21 clearly, they're Option One's policies and
22 they're policies dictated to us, so we can't give
23 confidential information without a
24 confidentiality agreement.

25 BY MR. WOOTEN:

1 Q Well, when you indicate that you have been
2 given instructions and directives from Option One to
3 your firm with respect to how to conduct a foreclosure
4 sale on behalf of Option One or how to manage their
5 process, are you referring to a document generally
6 called a subservicing mortgage agreement?

7 A That, I don't know.

8 Q Would you agree with me that the industry
9 standards with respect to how to conduct a foreclosure
10 in the proper process is generally governed by either
11 Fannie or Freddie Mae regulations regarding that
12 activity, to the extent that those guidelines serve as
13 an industry standard?

14 MR. CASH: Object. That calls for both a
15 legal opinion and an expert opinion, neither of
16 which he's being presented here for today.
17 30(b)(6) representative.

18 BY MR. WOOTEN:

19 Q Would you agree with me that the general
20 principles of mortgage servicing with respect to the
21 industry standards come from the guidelines put forth
22 by Fannie Mae and Freddie Mac?

23 MR. CASH: Same objection. Additionally,
24 we're not a mortgagor servicer, so it's asking
25 him to opine beyond his areas.

1 If you know, you can answer.

2 THE WITNESS: No.

3 BY MR. WOOTEN:

4 Q You don't agree or you don't know?

5 A Repeat the question one more time.

6 Q Yes, sir. Let me try and do a little bit
7 better job.

8 A Thank you.

9 Q With respect to the guidelines which serve
10 as the industry standard regards to mortgage
11 servicing, would you agree that those are generally
12 considered to be those guidelines published by Fannie
13 or Freddie?

14 MR. CASH: And if you'd just insert the same
15 objection as to the last two questions at this
16 point. I repeat those objections.

17 THE WITNESS: Generally.

18 BY MR. WOOTEN:

19 Q Okay. And, again, I understand that any
20 parties to a contract can modify those terms. I'm
21 just talking about generally the industry accepts
22 those as the standard, and where they deviate, they
23 deviate by agreement generally; is that fair?

24 A That's fair.

25 Q Okay. In a -- so a subservicing agreement

1 with respect to default services is generally an
2 agreement to provide the types of services that your
3 firm is providing with respect to a mortgage loan that
4 has become delinquent and needs to foreclose; is that
5 correct?

6 A Yes.

7 Q And is there a subservicing agreement
8 between LPS Default Solutions and Option One Mortgage
9 Company for the provision of the services which you
10 have contracted to provide?

11 A I don't know if it's a subservicing
12 agreement or not.

13 Q Okay. Is it in the nature of a subservicing
14 agreement, in that Option One provides to you the
15 guidelines they expect for you to follow?

16 A I don't know if it's in the subservicing
17 agreement, but we do work with Option One in reference
18 to the guidelines that are provided to us.

19 Q And is it your interpretation or
20 understanding that those guidelines generally follow
21 the industry standard?

22 A Generally.

23 Q So, generally, the industry standard would
24 apply, but there may be deviations as between your
25 specific agreement?

1 A There could be.

2 Q But you don't know?

3 A I don't know.

4 Q And you haven't reviewed that prior to
5 coming here today?

6 A No, I have not.

7 Q The entry at No. 118, dated June the 20th of
8 2007, indicates that a person by the name of Marques
9 Roberson made this entry?

10 A Uh-huh.

11 Q And that he is a Fidelity employee, which
12 would be an LPS employee?

13 A That's correct.

14 Q Do you know where Mr. Roberson's
15 employment --

16 A No.

17 Q -- is domiciled?

18 A No, I do not.

19 Q This indicates that it is a forward
20 intercom. Can you explain the significance of that
21 type of message?

22 A Sure. Basically what he's doing is he's
23 sending the intercom request to Ann Russo, Karen
24 Singleton, and Robin Smith, just for a general update
25 and based off a payment dispute. Says: Ann, please

1 also forward the below to the loss mitigation high
2 risk team. Please see under -- file under Attorney
3 Correspondence ASAP.

4 Do you want me to go through the whole
5 thing?

6 Q Well, go ahead and read the rest of that
7 entry, please.

8 A This debtor has an attorney and is getting
9 ready to file suit on this matter. As you will see,
10 the debtor tried to pay the loan in full and
11 apparently was not accepted, check from insurance was
12 but personal check was not. From our understanding on
13 this, there is no house on the property. It burned to
14 the ground on November 2nd, 2006. Please advise.

15 Q And with respect to this entry, it indicates
16 that there is a file under the heading Attorney
17 Correspondence. Where would that file be located?

18 A What do you mean, the file under attorney --
19 basically it's the file, the electronic file.

20 Q And is that part of the Process Management
21 system?

22 A Yes. What we do is we upload the --
23 whatever documents have been received, we'll upload
24 into Document Management for the client or attorney to
25 be able to review. And it would be labeled underneath

1 **Attorney Correspondence.**

2 Q Now, when you indicate Attorney
3 Correspondence, are you referring to --

4 A That's just a --

5 Q -- an attorney for the borrower?

6 A Not necessarily. It's just basically just
7 an upload document type that we utilize.

8 Q Okay. So this is not some file which
9 segregates your communications between your network
10 attorneys --

11 A No.

12 Q -- and your company?

13 A That's correct.

14 Q This is simply a file where any document
15 generated by an attorney, whether it be for the
16 borrower or from your network, is uploaded?

17 A Yes.

18 Q And under Process Management, is that
19 documents that were produced for this -- during this
20 discovery request and for this deposition?

21 A Everything in Document Management was
22 produced.

23 Q So that would include --

24 A It would include this.

25 Q -- everything in that category?

1 A Yes.

2 Q Is there any other method of communicating
3 between a network attorney and your company that has
4 not been talked about as we sit here today so far?

5 A No.

6 Q With respect to Entry 114, it indicates it
7 was written by an employee of Option One Mortgage
8 Company named Eldon Smith?

9 A That's correct.

10 Q Do you -- have you ever had any interaction
11 with Mr. Smith?

12 A Have I personally, no.

13 Q Do you know what his employment position is
14 with Option One?

15 A No, I do not.

16 Q At Entry 73, there's an entry by an Ann
17 Russo with Option One which indicates foreclosure was
18 restarted by Eldon Smith as an active foreclosure.
19 That would've simply been their instructions through
20 your system to continue on with the foreclosure sale?

21 A Yeah, just basically restart the foreclosure
22 process.

23 Q Does that involve a new publication?

24 A I believe so.

25 Q That entry was made at about 1:55 p.m.,

1 looks like, on August the 20th of 2007.

2 There is an entry at No. 67 by a Mary
3 McNamee, who appears to be a Fidelity employee, or an
4 LPS employee; is that right?

5 A Uh-huh.

6 Q With a comment about the reason for the
7 restart with the foreclosure. Apparently, she's
8 seeking that information from Option One; is that
9 correct?

10 A Yes.

11 Q Is there anywhere in your notes that ever
12 indicates or questions Option One as to the
13 application of these funds that it's holding regarding
14 this foreclosure?

15 A We don't -- we don't -- we didn't question
16 the client.

17 Q So whatever they tell you to do, you're
18 going to do, right?

19 A That is correct.

20 THE VIDEOGRAPHER: Excuse me. Need to
21 change tape.

22 MR. WOOTEN: Sure.

23 THE VIDEOGRAPHER: Off record at 2:03.
24 (Off the record discussion.)

25 THE VIDEOGRAPHER: Back on record at 2:04,

1 beginning Videotape No. 5.

2 BY MR. WOOTEN:

3 Q Okay. Moving on through this process with
4 your notes there, Mr. Newland. Ying Hang is an
5 employee of yours?

6 A Which line are you looking at?

7 Q It's at 54.

8 A Yes, she is.

9 Q She is?

10 A Yes, she's an employee of Fidelity -- or LPS
11 Default Solutions, sorry.

12 Q Is she based in Mendota Heights?

13 A Actually, she is based in Mendota Heights.

14 Q Is she a member of what is commonly called a
15 document execution team?

16 A No, she's not.

17 Q What is her position in your company?

18 A I believe she's within our referrals
19 department.

20 Q What is a process FC, dash, RQA?

21 A I believe that's reviewing of the
22 assignments.

23 Q That doesn't mean request for assignment,
24 does it?

25 A It could be. I don't know off the top -- it

1 could be review or request for assignment. I don't
2 know off the top of my head.

3 Q Every one of these little processes that are
4 entered in here, have these little codes by them, like
5 the one right below that says process FC, underscore,
6 AL, underscore, other, underscore, other, every one of
7 those processes have some written explanation of what
8 they mean somewhere on your system, don't they?

9 A Yes, they do.

10 Q And that is something that you can pull up
11 and print off relatively simply if you have access to
12 the system, isn't it?

13 A You can pull it up and be able to view it,
14 yes. I don't know about pulling it and -- I'm sure we
15 probably --

16 Q Is it fair to say that there is somewhere a
17 library which details the meaning --

18 A Yes, there is.

19 Q -- of each of those processes?

20 A Yes, there is.

21 Q And those are codes for actions on a file,
22 right?

23 A It -- basically, they're the event
24 processes. So, in other words, the
25 FC_Alabama_Other_Other process is basically the core

1 foreclosure process.

2 Q Right. I assumed that FC meant foreclosure,
3 but I wanted to ask.

4 The next entry by this lady, which is 53,
5 indicates there's an update, and it says that there is
6 an initial review of assignment complete, it completed
7 on 8/21 of 2007; is that correct?

8 A Yes.

9 Q If there were a document associated with
10 that review, it would show up in this system somewhere
11 at that time, would it not?

12 A Yes, it should.

13 Q So there should be an entry on 8/21 of 2007
14 regarding that; is that fair?

15 A There should be.

16 Q Y'all brought in from lunch this imaging
17 information with respect to all the images that are
18 stored on your system; is that correct?

19 A Yes.

20 (Plaintiffs' Exhibit No. 25 marked for
21 identification.)

22 Q I'm going to mark that as Plaintiffs'
23 Exhibit 25, ask you to take a look at it.

24 Does it indicate anywhere on there that
25 there's some assignment in the system?

1 A I don't see it on here.

2 Q That's a pretty important document, isn't
3 it, Mr. Newland?

4 A Sure, it is.

5 Q Is that not the type of document that would
6 ordinarily be within your image records in this type
7 of process?

8 A It could be, yes. Could've also been sent
9 to the attorney directly. Without looking at it, I
10 don't know.

11 Q If it were sent to the attorney directly,
12 would it not also have passed through New Image or
13 image processing?

14 A It should be uploaded, yes.

15 Q Because, again, we talked about this
16 earlier, but the agreement is, is that your company
17 monitor and make this work flow happen, and Option One
18 hires you to do that, and then you deal with the
19 attorneys. And so you serve as the intermediary for
20 the information and documents that are passing
21 through; is that safe and fair to say?

22 A Yes.

23 Q So if -- you agree with me if the assignment
24 is not for the correct entity or is not correct, it
25 would be impossible to foreclose with a bad

1 assignment, wouldn't it?

2 MR. CASH: Objection. Calls for a legal
3 conclusion. If you know, you can answer.

4 A That would be up to the attorney to make
5 that determination.

6 Q Sure. Part of -- your business, you would
7 not want to be sending out the door assignments that
8 were not correct or accurate, right?

9 A Run that by me again.

10 Q As part of your business in the value that
11 you provide to these two other defendants in this
12 case, you would not want to be reviewing assignments
13 and those assignments be in error, right?

14 A That's correct.

15 Q So normally, you would've preserved that
16 type of document in some manner, so that you could
17 have reviewed it, so that when you made an entry such
18 as No. 49 where you said that the review was complete,
19 you would have had some information there to show what
20 your employee reviewed, right?

21 A That's correct.

22 Q There is a second package of documents sent
23 to Mr. Humphrey's office on 8/21/07 at 11:52 a.m. at
24 Entry No. 44; is that correct?

25 A That's correct.

1 Q And that is about five minutes after the QA
2 review of the assignment was completed, correct?

3 A Yes, it is.

4 Q Have you provided to myself or my co-counsel
5 the documents contained in this NewTrak image ID No.
6 4137583?

7 A Yes.

8 Q And have you provided by a separate
9 production the documents included in New Image ID
10 No. 3550946?

11 A Yes.

12 Q Let me see that 25.

13 A It would be the June 1st entry and also the
14 August 21st entry.

15 Q I noticed -- oh, sorry, let me back up just
16 a second. Does the ID number in the left column of
17 Plaintiffs' Exhibit 25 bear any correlation to the
18 NewTrak image ID numbers which are indicated in these
19 notes?

20 A I don't know.

21 Q I see that there is a June 1st, 2007, entry
22 involving 17 pages at 8:38 a.m. And it is 1,335,168
23 bytes in size, it involves 17 pages. And your process
24 notes indicate that ID No. 3550946 was uploaded at
25 9:17, or approximately 40 minutes later, for

1 Mr. Humphrey. Does it appear to you that that entry
2 on Plaintiffs' Exhibit 25 would correlate to the entry
3 in No. 156 of your Process Management notes?

4 A It would seem so.

5 Q Okay. On 8/21 of '07, there is an entry --
6 or actually two entries, one at 8:45 a.m. and one at
7 8:48 a.m., each bearing a different ID number. The
8 first, August 20 -- or September 21st entry at 8:45
9 a.m. indicates that there are 1,453,112 bytes in 18
10 pages.

11 (Brief interruption.)

12 MR. WOOTEN: There's my alarm for my call.
13 Okay. I need to go take a break and get this
14 call handled.

15 MR. CASH: Okay.

16 THE VIDEOGRAPHER: Off record at 2:17.

17 (Off the record discussion.)

18 THE VIDEOGRAPHER: Back on record at 2:17.

19 BY MR. WOOTEN:

20 Q I'm sorry, we were talking about these
21 entries on August 21st of 2007, the first one,
22 1,453,112 bytes and 18 pages, and numbered in your
23 imaging documents as 71874430. It says that it is a
24 screen print, dash, FC. Assuming again that FC stands
25 for foreclosure?

1 A That's correct.

2 Q And then there is a second entry immediately
3 following, and its ID number is 71874554, and it also
4 says screen prints, dash, FC, is slightly larger at
5 1,468,858 bytes and 18 pages also and three minutes
6 later.

7 There is no entry that I have been able to
8 locate in your process notes indicating an assignment
9 was uploaded or identified separately. Have you found
10 any in your review of it?

11 A No.

12 Q It appears that the only difference between
13 the June 1st, 2007 entry and the two entries on August
14 21st is one page; is that correct?

15 A That's what it seems to be.

16 Q And with respect to that, is it your belief
17 that the entry numbered 44, which is at 11:52 a.m.,
18 whatever time this is on this system, where you have
19 NewTrak image ID No. 4137583, represents the -- one of
20 the two entries that we identified on Plaintiffs'
21 Exhibit 25. Is that correct?

22 A That would be correct.

23 Q And then at Entry 37, on August the 22nd of
24 2007, there is an intercom message from Ann Russo to
25 Karen Singleton on your system, indicating that Scott

1 Humphrey's office should deduct the \$138,482 in
2 insurance proceeds from a total payoff of 149,045.72,
3 leaving a referral balance of \$10,563.72. Is that the
4 first indication that your company received of what to
5 do with the funds which were being held in the
6 restricted escrow account?

7 A We did not receive that. That was a
8 communication between Ann Russo of Option One and
9 Karen Singleton of Scott Humphrey's office. Did not
10 go through an LPS associate.

11 Q It does not pass through your system at all?

12 A It passes through the system, but it does
13 not pass to any of my associates.

14 Q Okay. We've sat here and reviewed these
15 notes together. Have there been any other entry that
16 you've seen in preparing to testify today that
17 indicated prior to August the 22nd of 2007 what should
18 be done with the funds in the restricted escrow
19 account?

20 A Not prior to that time.

21 Q Once that message passed from Option One to
22 Karen Singleton, that information would've been
23 available to every user in your company with respect
24 to that, correct?

25 A They would've been able to view it, yes.

1 Q With respect to the bidding instructions
2 indicated in Entry No. 25, which is an automated
3 process, that's NewTrak image ID 4368311, does that
4 appear to correlate with either one of the two entries
5 made by Ann Russo, which is in the imaging section, or
6 Plaintiffs' Exhibit 25, on that same date at either
7 10:54 a.m. or 2:10 p.m.?

8 A That would be correct.

9 Q And since --

10 A Should say bidding instructions on it also.

11 Q It does.

12 A Okay.

13 Q And since it also was at 10:54 a.m., does it
14 appear to correlate to Entry No. 25, which appears to
15 have been entered in your system of 10:55? So the
16 first entry of bidding instructions on that date, your
17 document ID No. 73300397, does it appear to correlate
18 to Entry No. 25?

19 A Yes.

20 Q And would Entry No. 24 be apparently the
21 second entry in your document imaging system at
22 2:10 p.m., No. 73316049, also called bidding
23 instructions, where Mr. Humphrey's office picked up
24 those instructions?

25 A I don't think that correlates with what's in

1 the Document Management system. It's just basically
2 Line 24 basically correlates with Scott Humphrey
3 receiving the bidding instructions.

4 Q Okay. So there is a second set of bidding
5 instructions that go in at Entry 15 at 2:10, which
6 appear to correlate to this entry we previously
7 mentioned --

8 A Yes.

9 Q -- 73316049?

10 MR. CASH: Nick, I have 1:25 (sic).

11 MR. WOOTEN: Yeah. Let me make this call.

12 Let's go off the record.

13 THE VIDEOGRAPHER: Off record at 2:26.

14 (Brief recess.)

15 THE VIDEOGRAPHER: Back on record at 3:03.

16 BY MR. WOOTEN:

17 Q Let's see --

18 (Brief interruption.)

19 MR. WOOTEN: Oh, we're off the record.

20 THE VIDEOGRAPHER: Off the record at 3:03.

21 (Off the record discussion.)

22 THE VIDEOGRAPHER: Back on record at 3:12.

23 (Plaintiffs' Exhibit No. 6 marked for
24 identification.)

25 BY MR. WOOTEN:

1 Q Okay. I apologize, Mr. Newland. I don't
2 want to take any more of anybody's time than
3 necessary. I'm going to try to move through some of
4 these documents that I need to identify pretty
5 quickly, just ask you if you can recognize them. This
6 is a document I've marked previously as Plaintiffs'
7 Exhibit 6. I'll represent to you that it is a
8 document received during discovery from your lawyers.
9 Ask you if you recognize that document?

10 A Yes, I do.

11 Q And is that a -- does it appear to be a copy
12 of the promissory note executed by my clients?

13 A Yes.

14 Q Okay. Are there any attachments to the
15 actual promissory note in the case?

16 A There is an addendum.

17 Q Okay. And what does the addendum entail,
18 please, sir?

19 A For interest only payment period.

20 Q So that's an interest only rider --

21 A Yes.

22 Q -- to a promissory note. Are there any
23 other documents attached to that promissory note?

24 A The allonge.

25 Q Okay. And what is an allonge, please, sir?

1 A It's an assignment of the note.

2 Q And what allonges appear to be present on
3 that note?

4 A From H&R Block Mortgage to Option One
5 Mortgage.

6 Q And is that the only allonge that's present?

7 A There's another allonge that's attached here
8 in the back.

9 Q Okay. Would those documents that you
10 produced with respect to the mortgage note be exactly
11 as you received them from your client, Option One?

12 A Yes.

13 Q Does it appear to you from reviewing those
14 documents that the allonges to that promissory note
15 are, while with the note, not attached to the note?

16 A Not attached to the note?

17 Q Not physically connected to the promissory
18 note itself?

19 A No.

20 Q Appear to be separate pages, right?

21 A That's correct.

22 Q Are those allonges dated in any way?

23 A The note doesn't look to be dated.

24 Q And that would have been the documents which
25 you would've transmitted to Scott Humphrey for the

1 purpose of conducting a foreclosure on behalf of
2 Option One, correct?

3 A That's correct.

4 Q That would have been some of the documents
5 which would have been prepared or which would've been
6 retrieved through the automated processes of your
7 software, your Process Management software, right?

8 A It would've been retrieved based off of the
9 push from Option One on the documents.

10 Q So your software would've made the request
11 and they would've responded with their original
12 documents --

13 A That's right.

14 Q -- or scans --

15 A They would push the documents to us.

16 Q Sure.

17 A To our imaging system.

18 (Brief interruption.)

19 THE WITNESS: To our imaging system.

20 BY MR. WOOTEN:

21 Q So those documents would've -- would be part
22 of what was identified, we would be able to look back
23 to your imaging system at the date in the documents
24 and pick that information out, right?

25 A Yes.

1 Q It looks like those documents would've been
2 pushed by Arvind Kumar on 6/4/07, at Entry 150 is
3 where they were explained.

4 You have a corresponding entry numbered
5 67471979 that says it is the note and says that it
6 consists of eight pages on 6/5/07 at 5:42 a.m., and it
7 says it was uploaded by an automated process. Does
8 that sound right?

9 A Sounds correct.

10 Q Are there eight pages in that document?

11 A Yes, there's eight pages.

12 (Plaintiffs' Exhibit No. 7 marked for
13 identification.)

14 Q Okay. With respect to Plaintiffs'
15 Exhibit 7, I'll hand it to you and represent to you
16 it's a copy of a recorded mortgage which was produced
17 by your attorneys during discovery. Ask you if you
18 recognize that document as such?

19 A Yes.

20 Q I see two entries with respect to a security
21 instrument numbered sequentially in your imaging
22 software, one is 67471976, it says it is 11 pages, and
23 one is numbered 67471977, and it indicates it is 12
24 pages. Is that document 12 pages or 11 pages?

25 A I'd say it's 12. It's 12 pages.

1 Q All right. 12 pages in that situation,
2 there is a cover page which is proof of recording from
3 the local recording official --

4 A Yes.

5 Q -- is that correct?

6 A That's correct.

7 Q 11 pages actually make up the security
8 instrument?

9 A Yes.

10 Q Does that document have any assignments of
11 mortgage attached to it?

12 A No, I did not see any assignments attached
13 to it.

14 Q Are you familiar with The Summit?

15 A Uh-huh.

16 (Plaintiffs' Exhibit No. 8 marked for
17 identification.)

18 Q I show you -- I'm sorry, Madam Court
19 Reporter, I knocked your microphone over again -- a
20 document I marked as Plaintiffs' Exhibit 8. Can you
21 please explain what that document is?

22 A Sure. It was a newsletter that went out
23 from, at the time, Fidelity National Foreclosure &
24 Bankruptcy Solutions.

25 Q Pre name change to LPS?

1 A Yes.

2 Q Is The Summit still published?

3 A No, it's not.

4 Q Do you publish a newsletter of a similar
5 name or type for the industry?

6 A No. LPS Default Solutions does not.

7 Q Okay. Is there a company that does that's
8 part of the Fidelity or the LPS, Inc., umbrella?

9 A Not that I know of.

10 Q That document has a short summary of the
11 modules or platforms within LPS Default Solutions'
12 protocols; is that right?

13 A Yes.

14 Q Highlighted with a pink highlighter?

15 A Uh-huh.

16 Q Does that accurately state in the capacities
17 of those platforms and programs with respect to what
18 they are capable of doing?

19 A Yes, that's correct.

20 Q Is there anything incorrect in that article?

21 A In your highlighted portions?

22 Q In that -- I've only highlighted portions of
23 that, but that's like just a little half page segment
24 there about your platform. In that entire caption
25 there discussing basically your document solution,

1 your process management and your imaging solution and
2 invoicing, is there anything in that article that is
3 incorrect?

4 A It's pretty concise.

5 Q I understand that it's the three points and
6 a poem version of what you do --

7 A Yes.

8 Q -- and that that's sort of a glam thing for
9 your industry partners, but I'm just saying, there's
10 nothing inaccurate, is there?

11 A Not that I see.

12 Q Okay. That was really all I needed out of
13 that document, please, sir. And we talked about 9.

14 Did you review your answers to your
15 interrogatories and requests for production prior to
16 coming to the deposition today?

17 A Yes, I did.

18 (Plaintiffs' Exhibit No. 10 marked for
19 identification.)

20 MR. WOOTEN: Do you have that copy of that?

21 Okay. Let him take a look at it.

22 BY MR. WOOTEN:

23 Q At any time in this foreclosure process, was
24 Scott Humphrey ever representing LPS?

25 A No, he was not.

1 Q In fact, he was a vendor to LPS as part of
2 the attorney network?

3 A Yes.

4 Q So he agreed to provide services to clients
5 who were referred to him for a flat fee?

6 A That's correct.

7 Q And the agreement to provide those services
8 at that fee was between LPS and Scott Humphrey?

9 A That's correct.

10 Q There is no independent contract for
11 employment between Scott Humphrey and Option One, is
12 there?

13 A No, there's not.

14 Q I asked a question regarding -- in my
15 interrogatories, regarding any contracts or agreements
16 between you and any other defendant in this case which
17 allows you to pursue collection and/or foreclosure
18 efforts on the plaintiffs' mortgage. That question
19 was objected to, and I'm assuming based on the nature
20 of some of the objections today, that it was objected
21 to because of the clause which said -- or the phrase
22 which said "which allows you to pursue collection
23 and/or foreclosure efforts on the plaintiffs'
24 mortgage," right?

25 A Yes.

1 MR. CASH: Well, let me object to him
2 answering as to why it was objected to.
3 Obviously, the objections were legal decisions
4 made by the lawyers, not by the witness.

5 MR. WOOTEN: Well, I'm just -- in reading
6 from the answer, it says that you don't have a
7 contractual agreement with any of the other
8 defendants which authorizes LPS Default to pursue
9 collection and/or foreclosure proceedings of the
10 plaintiffs' mortgage, so I -- I mean, is that the
11 basis of the objection, was that phrase?

12 MR. CASH: Yeah.

13 MR. WOOTEN: Okay. So, with respect to the
14 actual contract, we've agreed that we've got to
15 figure out how to get that document into play,
16 whether it's protective order or whatever, right?

17 MR. CASH: Yes.

18 MR. WOOTEN: Or partial redaction, whatever
19 we need to do.

20 BY MR. WOOTEN:

21 Q The invoicing system that you guys operate,
22 imaging or the -- what do you call it, the invoicing
23 system?

24 A Invoice Management.

25 Q Does that system also record images of the

1 bills which are submitted as well as the payment
2 advices which are made? In other words, does it not
3 only copy the bill, but does it copy the check?

4 A I don't know.

5 Q Does that system indicate within that
6 portion of your system when the invoices submitted
7 were paid and by whom?

8 A I'm not -- I'm not an expert on Invoice
9 Management. I don't know.

10 Q But you indicated earlier that you have a
11 manager who deals with that portion of the business,
12 right?

13 A I have -- not a manager that deals with that
14 portion of the business, but we do have individuals
15 within Invoice Management that probably could answer
16 your questions.

17 Q Is there like a team leader, supervisor,
18 vice president in charge of that?

19 A Yes, there is, but I don't know who that is
20 off the top of my head.

21 Q And that person is not a part of your normal
22 management team --

23 A No, it's --

24 Q -- that you meet with regularly?

25 A No, they are not.

1 Q Is there any portion of either Process
2 Management, Document Management, or Invoice Management
3 which would contain evidence of payments from your
4 partner or your network attorney back to LPS Default
5 Solutions?

6 A No.

7 Q When a foreclosure sale is conducted by a
8 network attorney, if a third-party buyer purchases at
9 the sale the particular parcel being foreclosed upon
10 and your network attorney receives those proceeds, do
11 they distribute those proceeds directly to the
12 servicer or do they distribute those proceeds to LPS
13 Default Solutions?

14 A Directly to the servicer.

15 Q Does LPS Default Solutions maintain records
16 with respect to how many sales are -- result in third
17 party sales and how many sales result in investor or
18 servicer repurchases or purchases?

19 A Yes, we do.

20 Q Do you know that -- what that percentage is
21 off the top of your head of loans which are
22 repurchased by either the investor or the servicer?

23 A Not off the top of my head I do not.

24 Q Is that a normal reporting function --

25 A Yes, it is.

1 Q -- that you have? Is there a name for it?

2 A The name for the --

3 Q The report.

4 A Yeah, third-party sale report.

5 MR. WOOTEN: And, Mike, what I'm interested
6 in there, is not to have a bunch of information
7 about all their data, I'm really looking for the
8 percentage of sales that are conducted that
9 result in a third-party purchase versus a
10 repurchase by the investor or the servicer. If
11 you can get that for me. If I need to make a
12 separate request or whatever, I will.

13 MR. CASH: I'm probably going to have you
14 make a request, because I'm probably going to
15 object to it. It's not relevant to any issue in
16 this case. But I don't want to fuss with you
17 about it right now.

18 But while we're talking to each other on the
19 record, just want the record to be clear that
20 after the break, we did produce the P -- 309?
21 The P309 screen for this case and the --

22 MR. WOOTEN: I'm going to go back and --

23 MR. CASH: -- Invoice Management documents.

24 MR. WOOTEN: I'm going to go back through
25 those documents and identify them.

1 MR. CASH: Okay.

2 MR. WOOTEN: And we'll talk about that,
3 so...

4 MR. CASH: Okay.

5 MR. WOOTEN: Yeah. I mean, I didn't see a
6 P309, but I was in a hurry, so we'll look back at
7 that.

8 BY MR. WOOTEN:

9 Q In your responses to interrogatories with
10 respect to Item No. 3, there's a list of LPS employees
11 who were involved in inputting information or
12 interacting with this loan account. Is it your
13 testimony that that is an exhaustive list of LPS
14 employees who were involved with this loan?

15 A Yes.

16 (Brief interruption.)

17 MR. WOOTEN: I'm sorry, I'm just in space.
18 I thought I was having a muscle twitch. I didn't
19 even realize you were touching me. It's been a
20 long night, so... I didn't mean to just be
21 dozing off over here. That's what two hours of
22 sleep will get you.

23 BY MR. WOOTEN:

24 Q Other than the loan file number which you
25 identified in your response to No. 4, there is no

1 other identification mechanism within LPS's system for
2 this particular loan account, is there?

3 A That's correct.

4 Q And that is information provided to you by
5 Option One?

6 A That's correct.

7 Q With respect to the administrative services
8 fees on your answer to the interrogatory, I believe
9 it's No. 5, it indicates that there were invoices
10 generated by Fidelity for technology and/or
11 administrative services. We talked a little bit
12 earlier about the fee structure with respect to LPS.
13 You indicated that all the fees came from the attorney
14 network; is that right?

15 A That's correct.

16 Q Does LPS delineate between administrative
17 services fees and technology fees?

18 A Yes, they do.

19 Q Okay. What exactly is a technology fee?

20 A Utilization of our technology.

21 Q Okay. And can you tell me how that fee is
22 determined?

23 A No, I cannot.

24 Q Is that one of those proprietary items or
25 you just don't know?

1 A I do not know.

2 MR. CASH: It would be a proprietary item,
3 but I was pretty sure he didn't know, so I
4 figured I'd save an objection. I figure I've
5 used a bunch already.

6 MR. WOOTEN: Sure. With respect to that,
7 Mike, that's going to obviously become an issue,
8 at least -- again, I'm not interested in exposing
9 how you structure your fees. What I am
10 interested in doing is identifying what fees were
11 charged, how they were paid and what their life
12 cycle was. So, again, I don't -- I don't care
13 what you're charging, I just need to know how it
14 got -- what happened to it, where it went, that
15 sort of thing.

16 MR. CASH: How it got paid -- that it didn't
17 get passed on to the borrower, I understand.

18 MR. WOOTEN: Right. So --

19 MS. NEWMAN: It's a different company.

20 MR. CASH: Okay. The other thing is, the
21 technology fee isn't charged by this defendant,
22 it's a different company.

23 MR. WOOTEN: Okay. So technology apparently
24 will be charged by MSP or another -- it's
25 entirely different?

1 MR. CASH: A different entity.

2 MR. WOOTEN: Okay. Well, just so we can
3 clear this up, because that's what I'm trying to
4 do today, is eliminate as many issues as
5 possible. Will we be able to get the information
6 about what constitutes the technology fee or at
7 least what the dollar amount is, that sort of
8 thing, so we can determine, try to follow the
9 trail, or will we be able to get the identity of
10 the entity who's charging that fee so we can
11 subpoena that information?

12 MR. CASH: Yeah, you can get the identity of
13 the company.

14 MR. WOOTEN: Sure. And I'm assuming it is
15 another Fidelity entity, right?

16 MR. CASH: I believe so, yeah. And so if
17 you'll write me a letter, I'll write you a letter
18 back. And then if you want to subpoena it,
19 we'll -- to the extent we think it's irrelevant,
20 we may move to quash the subpoena but, you know,
21 we'll do it, take all the steps.

22 MR. WOOTEN: Sure.

23 MR. CASH: But, yeah, I mean, I think we can
24 do that part.

25 MR. WOOTEN: Can do the dance. I

1 understand.

2 BY MR. WOOTEN:

3 Q As you sit here today, Mr. Newland, being
4 the person that runs LPS, do you know what the
5 schedule is for the total attorney's fees for a
6 foreclosure in the state of Alabama?

7 A In -- can you clarify the question?

8 Q Sure. Do you know what your network
9 attorneys in Alabama agree to charge as the total
10 amount of attorney's fees that they will charge for
11 conducting a foreclosure in the state of Alabama?

12 A We have the information we supplied from the
13 clients as it has been agreed to, yes.

14 Q So that information with respect to this
15 loan would come from your Option One agreement?

16 A That's correct.

17 Q How does a foreclosure get from a servicer
18 to a network attorney? What's the vehicle?

19 A The servicer will, in this case, Option One,
20 will provide the approval to begin the foreclosure
21 process through their MSP system, which would then
22 trigger the referral in a data tape that comes to us.
23 Then we would process the referral based off of them
24 sending the information to us. And then we would
25 provide the mechanism or the electronic copies of the

1 documents to the attorney along with the referral.

2 Q Okay. So is it fair to say that the
3 servicer lets you know that a referral and a
4 foreclosure needs to take place and then your
5 processes create the referral package and send it to
6 the network attorney?

7 A We don't create the referral package, we
8 merely send the information that's been provided to us
9 from Option One, in this case, to the attorney along
10 with the documents.

11 Q Is it your testimony that your contractual
12 agreement with your servicers, in this case Option
13 One, does not give you the right to set the parameters
14 for foreclosure with respect to the initiation of the
15 foreclosure and the time lines within which it must
16 take place?

17 A That is correct.

18 Q You indicated that a foreclosure deed had
19 been prepared, in your interrogatory Response No. 28,
20 but that you did not have a copy of that deed. Is
21 that because the deed was not submitted for a record
22 in DeKalb County, Alabama?

23 A That is correct.

24 Q Are your network attorneys required to
25 provide that type of documentation to you as part of

1 their contractual obligations?

2 A They are to provide a contract -- or a copy
3 of the deed, yes, uploaded.

4 Q With respect to Option One Mortgage
5 Corporation, is it your understanding that American
6 Home Servicing purchased their mortgage servicing
7 rights?

8 A That is my understanding.

9 Q Do you know approximately when that took
10 place?

11 A No, I don't know.

12 Q Did you sign a new agreement with American
13 Home Servicing at or about the time that took place?

14 A I do not know.

15 Q If your servicer clients instruct you to
16 assess to a mortgage account on a regular basis a fee
17 or charge, such as a property inspection or a broker
18 price opinion, while a loan is in the foreclosure
19 process, do you follow those instructions without any
20 deviation?

21 A We don't have the ability to assess those on
22 the mortgage servicing system. That's up to the
23 client.

24 Q So within LPS, your testimony is, is that
25 you do not make any changes to any data nor do you

1 provide a batch file of electronic data which provides
2 those types of charges to be updated to client loans?

3 A Not those type of charges.

4 Q Do you provide any data in any format to
5 your servicer clients which result in charges being
6 added to consumer loans?

7 A No, we do not.

8 Q Do you provide any data in any format to
9 your servicer clients with respect to the costs or
10 expenses incurred by LPS Default Solutions with
11 regards to any foreclosure process?

12 A I'm sorry, I'm going to need for you to
13 repeat that, because I could barely hear you when you
14 were talking the other way. I'm sorry.

15 Q I'm sorry. Do you or does LPS provide any
16 electronic data to any servicing client or, in this
17 case, Option One, which provides them information with
18 regards to any expenses or costs incurred in
19 association with a foreclosure proceeding?

20 A No, we do not.

21 (Plaintiffs' Exhibit No. 11 marked for
22 identification.)

23 Q Show you a document that's been marked as
24 Plaintiffs' Exhibit 11, and ask you if you've seen
25 that document before?

1 A That's assignment of mortgage.

2 Q All right. And do you know if that document
3 is a document which is located on the system either
4 imaging or Process Management with respect to this --

5 A I have not seen it in our imaging system,
6 but then, again, it could've been sent directly to the
7 attorney for processing and have bypassed our system.

8 Q Is it your testimony that that is the first
9 time you've seen that mortgage assignment?

10 A Yes, this is the first time I've seen it.

11 Q Thank you. Do you know what Option One's
12 principal place of business is with respect to its
13 mortgage servicing operation?

14 A No, I don't.

15 (Plaintiffs' Exhibit No. 12 marked for
16 identification.)

17 Q Show you a document that I marked as
18 Plaintiffs' Exhibit 12. Can you please explain what
19 that document is?

20 A Looks like it's an underwriting request from
21 First American.

22 Q First American is a company that is not
23 affiliated with your -- with LPS Default Solutions,
24 correct?

25 A That's correct.

1 Q In fact, the First American family of
2 companies is a competitor to the Fidelity group of
3 companies; is that right?

4 A In some cases, yes.

5 Q And in some cases, they utilize your
6 services for certain things, correct?

7 A I don't know if they utilize us or not.

8 Q Would you take a look at the -- I believe
9 it's the second page of that document, please, sir.
10 Does that document indicate that there is a prior
11 recorded first position mortgage lien on that
12 property?

13 A Yes, sure does.

14 Q What's the date of that letter please, sir?

15 A June 6th of 2007.

16 (Plaintiffs' Exhibit No. 13 marked for
17 identification.)

18 Q Let me show you this document I've marked as
19 Plaintiffs' Exhibit 13. Is that also an underwriting
20 request?

21 A Yes, it is.

22 Q What is the date of that --

23 A Title search.

24 Q -- of that request?

25 A May 30th, 2007.

1 Q May 30th?

2 A As the date hereof: May 30th, 2007.

3 Q Does that document also indicate a prior
4 first position mortgage on this property?

5 A It shows SunTrust Mortgage.

6 Q Is that the mortgage dated --

7 A July 22nd, 2004.

8 Q Filed in Book 1235, Page 178?

9 A That's correct.

10 Q Does that document indicate that there's any
11 problem with the legal description between the
12 mortgage and title report?

13 A Any indication?

14 Q Uh-huh.

15 A Not that I see.

16 Q Let me refer you back to this June 6th
17 letter and point out this area that's highlighted
18 right here.

19 THE VIDEOGRAPHER: Excuse me. Can I have a
20 second to change tape.

21 MR. WOOTEN: Sure. Let's take a break to
22 change the tape for just a second.

23 THE VIDEOGRAPHER: Off record at 3:49.

24 (Brief recess.)

25 THE VIDEOGRAPHER: Back on record at 3:56,

1 beginning Videotape No. 6.

2 BY MR. WOOTEN:

3 Q Okay. Mr. Newland, we were talking about
4 these underwriting letters. Looks like they're marked
5 as, what, 12 and 13? 13 and 14?

6 A Yes, 12 and 13.

7 Q 12 and 13. Both of those indicated there
8 was a previous filed first mortgage in the case; is
9 that right?

10 A That's correct.

11 Q And neither of those indicate that that was
12 ever satisfied, do they?

13 A No, not here.

14 Q Okay. And they also indicate that there's a
15 defect in the title description in the June 6, 2007
16 letter; is that correct?

17 A That's correct, by First American.

18 Q Did you ever ascertain if that error in the
19 description was ever corrected?

20 A No.

21 Q Anything in your notes or your system that
22 indicate that those errors were straightened out?

23 A No.

24 Q Is there anything that indicates how the
25 issue of the prior first mortgage was ever addressed?

1 A No, I assume that was addressed through
2 Scott Humphrey.

3 Q All right. Would he have normally notified
4 your firm, as a network attorney, if there was an
5 issue of a prior recorded mortgage?

6 A Typically, there -- the attorneys will
7 notify us if there's any problems with chain of title.

8 Q And that's something that a portion of the
9 fees that they charge to a consumer's account is paid
10 for in a foreclosure setting, right, is to check the
11 title?

12 A That's something that would be probably
13 through the attorney.

14 Q Sure. But I'm saying the attorney would
15 normally -- that would be part of their fee, to check
16 the title on what they're about to foreclose on?

17 A Part of the fee is to review the title.

18 Q Sure. And basically, what they're doing is,
19 I guess, you know, trying to make sure that there's no
20 prior existing liens and that there's nothing
21 intervening that would affect their ability to
22 foreclose, right?

23 A That's correct.

24 Q And they would also verify the legal
25 description, right?

1 A They should.

2 Q And nothing in the system indicates that
3 that took place with respect to this case at this
4 point, does it?

5 A No, it's not identified to us.

6 (Plaintiffs' Exhibit No. 14 marked for
7 identification.)

8 Q Sure. Let me just have those two. With
9 respect to Exhibit 14, this is a portion of an
10 evidentiary submission from another case in another
11 part of the world having to do with the contract for
12 services between, I believe it was, Fidelity National
13 Foreclosure Services and Saxon Mortgage. Let me just
14 ask you, and then --

15 MR. CASH: You're not going to make me
16 object to testimony from other cases involving
17 other servicers.

18 MR. WOOTEN: Oh, no, it's documents. It's
19 documents. I mean, I'm just -- I'm just trying
20 to establish more or less what the document's
21 like. I mean, I know you probably want to put
22 your objection on the record --

23 MR. CASH: Probably not going to have him
24 testify about any other documents from any
25 other --

1 MR. WOOTEN: No, I just want to ask him if
2 he has seen documents that look like this before,
3 reviewed them, familiar with them, that sort of
4 thing. Just general identification. And, Mike,
5 if you want to look at that with him, I mean,
6 I'll represent to you that I think that came out
7 of Judge Baum's court over in your neck of the
8 woods in Texas. So you probably have seen it.
9 And that's front and back copied, to save some
10 trees.

11 MR. CASH: I'm going to object to these
12 documents and any testimony from these documents,
13 as they're from some cause number or case number
14 08-0314, apparently from the Southern District of
15 Texas, which -- apparently involving some other
16 servicer which has nothing to do with this case
17 or any issue in this case.

18 BY MR. WOOTEN:

19 Q Well, and I hear you and want you to put
20 your objection on the record and make it. And I'll
21 just represent that the purpose of bringing those
22 documents to the deposition today, Mr. Newland, is it
23 appears to contain at least a portion of the contract
24 with the Saxon Mortgage Company, which is a mortgage
25 servicer, right?

1 A Yes, that's correct.

2 Q And everybody knows they're a national
3 mortgage servicer that's familiar with this industry,
4 right?

5 A That's correct.

6 Q And it looks like that that's at least a
7 portion of the contract which indicates, at least to
8 some extent, a fee schedule that's set forth from that
9 contract with Saxon Mortgage and your company. Does
10 that appear to be right?

11 MR. CASH: Go ahead, if you know.

12 BY MR. WOOTEN:

13 Q And take a minute and look at it. I'm not
14 rushing you in any shape, form, or fashion. I know
15 that you didn't make that production to me, so --

16 A No, I mean, you know, I'm not -- I was not
17 privy to these documents, so, I don't know.

18 Q Is there a division --

19 MR. CASH: Hold on. I'm going to object to
20 these documents in their entirety. These come
21 out of the Harris bankruptcy case. For the
22 record, the referral to the bankruptcy court was
23 withdrawn by United States District Judge Lynn
24 Hughes. And Judge Lynn Hughes imposed a
25 protective order on all of the documents in that

1 case, which would include the contracts in that
2 case. And the protective order was very specific
3 that all copies of these documents were to be --
4 were to be destroyed and that these documents
5 were not to be used by any person for any purpose
6 outside the Harris case, subject to sanctions in
7 the United States District Court for the Southern
8 District of Texas. These are from the Harris
9 case, because I see the Harris cause number on
10 here, and we are --

11 MR. WOOTEN: Sure, and I'll represent that
12 they are, but I'll tell you --

13 MR. CASH: We are objecting to these and may
14 want to have a separate evidentiary hearing as to
15 the source of these documents, who gave them to
16 plaintiffs' counsel, where they came from, and
17 may have to have further proceedings before Judge
18 Hughes in the Southern District, subject to Judge
19 Hughes's protective order.

20 MR. WOOTEN: Sure.

21 MR. CASH: And we're going to give no
22 testimony on these documents. And I'm
23 instructing you not to even talk about these,
24 because these aren't even supposed to be here.

25 MR. WOOTEN: Okay. And I'll represent to

1 you, Mike, those came off of the ECF system
2 through use of Pacer, so --

3 MR. CASH: All I'm saying is, maybe -- I
4 don't know if the bankruptcy clerk didn't take
5 them down, but there is a protective order --

6 MR. WOOTEN: Sure.

7 MR. CASH: -- which I will forward to you.

8 MR. WOOTEN: And I'd be glad to take a look
9 at it, I hadn't seen it. So I pulled them off
10 the system through Pacer. I had no idea they're
11 subject to a protective order. So --

12 MR. CASH: I'll send it to you. And I'm not
13 fussing at you --

14 MR. WOOTEN: Right.

15 MR. CASH: -- I'm not saying -- and for the
16 record, I am not in any way implying that
17 Mr. Wooten did anything wrong or even had
18 knowledge of the protective order. And if the
19 record seemed to imply that, that was not the
20 implication and there was certainly no accusation
21 directed at Mr. Wooten whatsoever.

22 MR. WOOTEN: Sure. And, again, I pulled
23 these documents from Pacer and been aware of this
24 litigation, more or less knew of it since it
25 started, so, I mean...

1 MR. CASH: Sure.

2 MR. WOOTEN: All I knew is that it was
3 ongoing. But I pulled these documents a long
4 time ago.

5 But anyway, let's just set those to the
6 side, and if they're subject to protective order,
7 I'll shred them and we'll be done with it. It's
8 no big deal with respect to that.

9 (Plaintiffs' Exhibit No. 15 marked for
10 identification.)

11 BY MR. WOOTEN:

12 Q Exhibit 15 is an announcement with respect
13 to Fidelity -- hold on a minute. Fidelity National
14 Financial is a parent company of LPS?

15 A No, they're not.

16 Q Separate company. Are you familiar with a
17 company called DOCX LLC?

18 A Yes, I'm familiar with the company.

19 Q Do they serve as a vendor to LPS Default
20 Solutions?

21 A No, not a vendor of us, no.

22 Q You do not use them for mortgage lien
23 release issues?

24 A No, I do not.

25 Q Do not use them for assignment services?

1 A No, we do not.

2 Q Don't gain information from them from county
3 recording office requirements or fees?

4 A No.

5 Q You are aware they were purchased by
6 Fidelity National Financial, Inc., right?

7 A No, I was not aware of that.

8 Q And you're saying that there is no
9 relationship of any type between LPS Default services
10 and DOCX?

11 A None that I know of.

12 Q Is there anyone else in your firm who would
13 know if there were any relationship between your
14 entity and this entity?

15 A Not that I know of.

16 MR. WOOTEN: Just a second. I'm not going
17 to offer 15, I'm going to pull that, because I
18 looked at the wrong company name. So let me set
19 that off to the side. Is that in your way?
20 That's fine.

21 BY MR. WOOTEN:

22 Q Are you familiar with the missing document
23 process for Document Management?

24 A I'm somewhat familiar with it, yes.

25 Q What is it -- what is its purpose, what does

1 it do?

2 A Basically what it does, the attorneys will
3 request a document that they might not have received,
4 and we will go out and -- basically what the document
5 process does, it opens up a tracking mechanism for our
6 associates, and/or if it's the clients, to try to
7 retrieve those documents and upload them back into
8 Document Management for the attorney.

9 Q Okay. So is there a separate set of records
10 where the attorney would request a missing document?

11 A No, it's all Process Management.

12 Q So in the event that an attorney or servicer
13 requested an affidavit or an assignment or any
14 document like that or a copy of a mortgage or a copy
15 of a note, to the extent they made that request, it
16 would show up in Process Management?

17 A Yes, it should.

18 Q And, again, we talked about, typically, if
19 there is a document that is located, there should be a
20 response in the Process Management notes indicating
21 that that document was found and imaged and brought
22 into the system, right?

23 A That is correct.

24 Q Or that it was delivered to the person
25 making the request, right?

1 A That is correct.

2 Q Does the Document Management system have a
3 word processing function where documents can be
4 altered or amended or changed prior to delivery to the
5 requester?

6 A Not that I know of.

7 Q Do you have any specific training with
8 respect to that?

9 A As far as Document Management, I have
10 basically been trained on the ability to use it, but
11 there are no overriding functions that I know of where
12 you can change any document.

13 Q And, again, if there were any way to alter
14 that document, there should be an archival system that
15 would create some record that it was changed; is that
16 your testimony?

17 A I don't know. I don't know if there's
18 anything like that in the system at all.

19 (Plaintiffs' Exhibit No. 16 marked for
20 identification.)

21 Q Let me ask you if you've ever seen that
22 document or the contents of that document before?

23 MR. CASH: Nick, I'm going to let you fish
24 for about 30 more minutes, and if we don't get to
25 the issues in this case, I'm going to shut this

1 down and we can talk to the Court about it,
2 because we're just wasting time now.

3 MR. WOOTEN: Well --

4 MR. CASH: I'm just telling you.

5 MR. WOOTEN: I'm -- you know, whatever you
6 think you need to do, brother, that's fine.

7 MR. CASH: All right.

8 MR. WOOTEN: We are to the issues in this
9 case.

10 MR. CASH: All right. Well, you tell me
11 what this document you're having him review has
12 to do with our case at all, especially given that
13 it's a November 1st, 2008, document.

14 MR. WOOTEN: I'm about to show you.

15 MR. CASH: All right.

16 THE WITNESS: Yeah, it looks -- it looks
17 like it was possibly an article that went into
18 The Summit back in, I guess, 2008.

19 BY MR. WOOTEN:

20 Q Sure. This foreclosure took place in 2007,
21 right?

22 Remember, we talked a little bit earlier
23 about incentive awards for being an APR winner?

24 A Yes.

25 Q And you indicated there are no incentives?

1 A That's correct.

2 Q Middle paragraph of that document, what's
3 the title of it?

4 A Says APR Incentive Winners.

5 Q Read that to me, please.

6 A It says: Each quarter FNFS distributes
7 financial incentive awards top ten performing firms in
8 foreclosure and bankruptcy in the form of \$20 per
9 billable file, with the next ten firms receiving \$10
10 per billable file. To date, FNFS has distributed over
11 \$402,000 to the top performing firms in quarterly
12 incentive payouts.

13 Q Does that sound like a financial incentive
14 for being a high APR firm?

15 MR. CASH: And, again, I'm going to ask what
16 is the relevance of that to any issue in this
17 lawsuit? I mean, if you can show that this firm
18 was on that, if you can show that this firm
19 somehow was tied to this, fine; otherwise, it is,
20 again, a wide range fishing expedition which has
21 nothing to do with this case.

22 BY MR. WOOTEN:

23 Q You said there were no payments for having a
24 high APR, there are no financial incentives?

25 A You asked if presently if we were paying out

1 any incentives, and I said no.

2 Q When did that end?

3 A Do not know off the top of my head.

4 Q And this article in November of 2008
5 indicates they're still being paid, right?

6 A That could've been previously.

7 Q Okay. Well, you don't dispute the date of
8 the article's November 1st, 2008?

9 A That's what's stated there, I have not seen
10 the actual Summit that was produced, no. You do not
11 have a copy of that.

12 Q Who did you tell me the vice president was
13 that was in charge of -- you had two of them that were
14 doing your attorney network? One of them -- was Mark
15 Cardenas one of them?

16 A No, it was not.

17 Q Why don't you take a look through that, and
18 take a minute and see if you see anything in that
19 report that's inaccurate or appears in any way to be
20 incorrect. If you do --

21 MR. CASH: No, I'm going to object. We're
22 not going to sit here and opine on that report.

23 MR. WOOTEN: Well, hold on a minute.

24 MR. CASH: Nick, you have -- I'm going to
25 instruct him not to answer. Do you have any more

1 questions about the Wood case?

2 MR. WOOTEN: Yeah, I do.

3 MR. CASH: All right, then ask them, because
4 those are the only questions we're answering the
5 rest of the day. I will take my chances that
6 this Judge will require discovery to be relevant
7 to the case in front of him. I'm willing to take
8 that risk.

9 MR. WOOTEN: Okay. So we're -- you're
10 making your same objection on the same agreement
11 we made earlier today?

12 MR. CASH: Yeah. Absolutely. If we have to
13 redo this, we can do it on my nickel down there,
14 but I'm not going to --

15 THE WITNESS: That's wrong. That's wrong.

16 MR. CASH: -- to have him sit here and
17 generally testify.

18 He will answer all the questions you have
19 about the Wood case.

20 (Plaintiffs' Exhibit No. 17 marked for
21 identification.)

22 BY MR. WOOTEN:

23 Q That document marked as Plaintiffs'
24 Exhibit 17, does it appear to be the August 2004
25 mortgage referenced in the earlier letters indicating

1 that your client's lien was not in first position?

2 A This looks to be the July 22nd mortgage.

3 Q Does it appear to be recorded on August the
4 11th?

5 A Yes.

6 Q Is there anything on that mortgage that
7 indicates it's been released?

8 A I don't see any satisfaction on this
9 mortgage.

10 (Plaintiffs' Exhibit No. 18 marked for
11 identification.)

12 Q Now, I'll show you a document, represent to
13 you that that is a copy of documents produced by
14 Option One to myself and my co-counsel in this case,
15 which are the Consolidated Note Logs from the MSP
16 software code.

17 A Okay.

18 Q Ask you if you've ever seen those documents
19 prior to today?

20 A No, I have not.

21 Q I notice that every entry that says FOR is
22 redacted.

23 A Okay.

24 Q Do you know what FOR stands for in the MSP
25 software?

1 A I believe it stands for the foreclosure
2 notes.

3 Q Okay. And that would be the part of this
4 process that your company is in charge of, right?

5 A Yes.

6 Q And that would be the entries into the MSP
7 software made by the employees of LPS Default
8 Solutions; is that correct?

9 A That, I don't -- I don't know if these, in
10 fact, are all from that, from our Process Management
11 system sent back to the MSP system.

12 Q All right. So, if you'll flip through there
13 and just verify for me that all of the entries marked
14 with FOR are redacted?

15 A They look to be. But this was a document
16 from Option One, correct?

17 Q It's an MSP document but, yes, it did come
18 from Option One.

19 A Okay.

20 MR. CASH: Just so the record's clear, LPS
21 had nothing to do with any of the redactions or
22 the decisions to redact.

23 MR. WOOTEN: No. And if I inferred that
24 they did, I apologize, Mike, I wasn't doing that
25 at all. I'm just drawing the correlation between

1 the two settings, okay?

2 MR. CASH: Uh-huh.

3 BY MR. WOOTEN:

4 Q You testified earlier that you are not
5 familiar with the various modules under MSP which
6 report to the software from which these Consolidated
7 Note Logs arrive, are you?

8 A No, I'm somewhat familiar with the FOR, as
9 that's the foreclosure work screen.

10 Q Sure.

11 A From my old days at Option One.

12 Q So, with respect to what's redacted, there
13 is no way to know, based on these redactions, if those
14 are entries between Mr. Humphrey and his firm and
15 Option One or if these are entries by LPS employees,
16 right?

17 A I have no idea.

18 Q Are you aware of whether or not LPS
19 employees may have made entries in the MSP software as
20 a part and parcel of the work that they did for your
21 entity, LPS Default Solutions?

22 A Not that I'm aware of.

23 Q Well, that kind of leaves me out in space,
24 Mr. Newland. Do you know if your employees can access
25 MSP and enter notes under the foreclosure fields or

1 not?

2 A I do not know whether they can enter those
3 fields or not. I don't know if that's a field that we
4 can actually access and put notes in there.

5 Q So I would need to talk to someone who is
6 more familiar about what capacities your employees
7 would have with respect to entering information into
8 MSP, right?

9 A That would be correct.

10 Q And, again, do you have anyone -- do you
11 know of anyone who might be knowledgeable about that,
12 who could explain that?

13 A No.

14 Q And you testified earlier that prior to me
15 presenting you these documents, you had not had any --
16 you had not made any review or investigation of the
17 information contained in these Consolidated Note Logs?

18 A No, I have not seen anything in the note
19 logs.

20 Q And you made no effort during your
21 preparation to testify today with respect to what
22 information might've been available to your business
23 through the MSP platform?

24 A No, I did not look at it, no.

25 (Plaintiffs' Exhibit No. 19 marked for

1 identification.)

2 Q This document marked as Exhibit 19, I'll
3 represent to you is a document provided to me as part
4 of Option One's discovery, which indicates
5 approximately 80 people had some interaction with the
6 Wood loan and provides identification for those
7 people. You're not familiar with any of those people
8 unless they're an LPS employee, are you?

9 A No, I'm not familiar with these people.

10 Q So you would not be familiar with any
11 contractors from India or anything like that?

12 A No, not at all.

13 Q Would you be familiar with any of the
14 businesses which provide those contractors?

15 A No, I'm not.

16 Q Do you know if Option One is located in
17 Jacksonville, Florida?

18 A Yes, they are.

19 Q Within your software services, are they
20 assigned a vendor or client code?

21 A Within our Process Management services?

22 Q Right.

23 A Yes, they are.

24 Q So if a communication came through Option
25 One to Process Management, there would be an

1 indication that that came from Option One to Process
2 Management, correct?

3 A It would be identified by the user ID, yes.
4 (Plaintiffs' Exhibit No. 21 marked for
5 identification.)

6 Q Okay. Let me ask you to take a look at
7 Exhibit 21, ask if you recognize that document.

8 A I don't recognize this document, but it
9 looks like it comes from our LPS Field Services
10 company.

11 Q Does that document appear to be either
12 property inspection or a broker price opinion?

13 A It looks -- I don't know, it looks to me to
14 be a property inspection.

15 Q Okay. What's the date of that, please, sir?

16 A June 15th, 2007.

17 Q Do you know if any of your employees with
18 LPS Default Services enter any coding under loss
19 mitigation on the MSP software?

20 A Not that I know of.

21 (Plaintiffs' Exhibit No. 22 marked for
22 identification.)

23 Q Where's that list of employees.

24 I'd ask you to take a look at Plaintiffs'
25 Exhibit 22, though based on your testimony you may not

1 recognize those documents, I just want to ask you if
2 you do. I'll represent to you that I believe them to
3 be documents from the MSP software system provided by
4 Option One.

5 A They look to be just screen shots and then
6 notes and I guess at the top of the page it says
7 Consolidated Notes Log, so, I imagine it's
8 Consolidated Notes Log.

9 Q Does that all, from what you're able to see,
10 appear to be documents which did come, in fact, from
11 MSP?

12 A As far as what I can see, yes.
13 (Plaintiffs' Exhibit No. 20 marked for
14 identification.)

15 Q Did I show you No. 20? It's a corporate
16 advance sheet.

17 A No.

18 Q I'll represent to you the document was also
19 provided to me by Option One Mortgage Company.

20 A Okay.

21 Q That document indicates a series of
22 transactions with respect to corporate advances. What
23 is the date that the first corporate advance occurred
24 that's listed there?

25 A Looks like 3/29 of '07.

1 Q Okay. And when is the last one?

2 A 10/10 of '07.

3 Q Does it appear that all those corporate
4 advances more or less had something to do with the
5 foreclosure process?

6 A I don't know about the property inspection
7 fees or -- you know, whether those were associated
8 with the foreclosure or not.

9 Q Sure. And what was the date of the property
10 inspection?

11 A That states July 5th of '07 and July 24th of
12 '07.

13 Q Does the document I previously marked as 21,
14 it appears to be dated 6/15/2007 --

15 A Okay.

16 Q -- more or less coincide with the dates of
17 those inspections?

18 A Possibility with the billing on July 5th, or
19 when it was paid, I guess, that's what it looks like
20 to me.

21 Q Now, is this part of the segregation of
22 services in the -- on the one hand, you're over here
23 at LPS Default Solutions and you're providing
24 foreclosure consultation, or however y'all term it,
25 and you're getting paid by the attorney for the work

1 that you guys do. But then over here, these costs are
2 being added by the servicer on the MSP software --

3 A That's correct.

4 Q -- for those relations?

5 A That's what it looks like.

6 Q And I notice in the payee category that you
7 had -- Scott Humphrey occupied one, two, three -- five
8 of those entries; and then FS, it looks like
9 F-I-D-E-L, which I'm assuming is a Fidelity entity,
10 there's one, two, three entries also there; and then
11 there is an entry for a BPO and an AVM valuation. Do
12 you know if the -- you said earlier you couldn't
13 recognize 21 as to whether it was a BPO or property
14 inspection --

15 A That's correct.

16 Q -- right? Fair enough. I can't either.

17 The invoices which were submitted by Scott
18 Humphrey which are dated in here in October and August
19 of 2007, those invoices were a part of what y'all just
20 brought in here while ago after lunch also?

21 A We brought you in the invoices. I don't
22 know if they're associated exactly with those, I would
23 assume they are, but...

24 (Plaintiffs' Exhibit No. 23 marked for
25 identification.)

1 Q Sure. Let me show you a document I
2 previously marked as Plaintiffs' Exhibit 23, ask if
3 you recognize that document.

4 A Looks to be an assignment of mortgage from,
5 looks like, H&R Block to Option One, dated
6 August 22nd, 2005.

7 (Plaintiffs' Exhibit No. 4 marked for
8 identification.)

9 Q Let me show you a document I previously
10 marked as Plaintiffs' Exhibit 4.

11 A Okay.

12 Q Down at the bottom of that document it says
13 something about -- the notes appear to say foreclosure
14 request. Are you able to interpret the field note
15 down at the bottom?

16 A Yeah, I have no idea. This is an Option One
17 entry. I have no idea what that means.

18 Q So that would've been entries made in the
19 MSP software again?

20 A That's what -- yeah, looks to be MSP
21 software, and I don't recognize -- we did not get the
22 referral prior to June 1st.

23 Q Now, I believe this document was in your
24 production.

25 MR. WOOTEN: Mike, do you want to look at

1 it? It doesn't have an Option One Bates stamp on
2 it.

3 MS. NEWMAN: Yeah, I think it was probably
4 out of Document Management.

5 MR. WOOTEN: Out of what?

6 MS. NEWMAN: Document Management.

7 MR. WOOTEN: Well --

8 MS. NEWMAN: Sorry.

9 MR. WOOTEN: Sure.

10 THE WITNESS: It could've been -- could've
11 been part of the screen prints, the screen prints
12 that went out --

13 MS. NEWMAN: Yeah, I think there's a packet
14 of screen prints in there, it probably was --

15 MR. CASH: We may want to go off while we're
16 having this little discussion, so she doesn't
17 have to get it all.

18 MR. WOOTEN: And the reason I said I believe
19 it came from y'all is because it doesn't have an
20 Option One Bates stamp on it.

21 MR. CASH: Exactly.

22 MR. WOOTEN: And I -- in going through these
23 documents, I went through your documents first
24 before I turned to the Option One documents.

25 BY MR. WOOTEN:

1 Q So, your testimony is, is those documents
2 came from -- that was not part of your Process
3 Management, but would've come from Document
4 Management?

5 A It's an MSP screen that looks to be
6 basically a screen scrape that we pulled off, possibly
7 part of the referral with the documents that were sent
8 out to the attorneys for them to make the assessment
9 in reference to financial figures.

10 Q Sure.

11 MR. CASH: Do we want -- oh, you're back on.
12 Okay. We never went off. Okay. I was going to
13 say could we do all that all again on the record,
14 but we already were.

15 BY MR. WOOTEN:

16 Q Sure. And with respect to this document,
17 it's dated 5/25 of '07 and --

18 A That's the notes that are on there, yes.

19 Q Right. And there's an MSP code for a KSS,
20 which is identified in Plaintiffs' Exhibit 19 as a
21 Sandeep Sharma with a company called, I guess, Pune,
22 P-U-N-E, and it says borrower assistance team. And it
23 indicates in that code JX050 Jacksonville, I mean, I
24 read that to say request for FCL, or foreclosure. Is
25 that -- do you have any understanding of what that

1 line means or --

2 A No.

3 Q -- is that all guesswork on my part?

4 A No. KSS, that company, has nothing to do
5 with LPS. My understanding borrower's assistance --
6 borrower assistance team is a term that is used by now
7 American Home.

8 Q Okay. And with respect to this, where it
9 says request for foreclosure to JAX, it -- do you have
10 any idea what that means?

11 A I have -- I have no idea. But that is not
12 an LPS --

13 Q Sure.

14 A -- acronym.

15 (Plaintiffs' Exhibit No. 5 marked for
16 identification.)

17 Q Show you what I previously marked as
18 Plaintiffs' Exhibit 5. Is that what we would commonly
19 refer to as the foreclosure package that your system
20 would put together and sent to Mr. Humphrey for Option
21 One?

22 A This looks to be the cover sheet that goes.

23 Q Sure.

24 A Now the documents behind it are not.

25 Q Okay. Explain to me what the documents

1 behind it are then, please, sir.

2 A Sure. The -- basically they're bidding
3 information that we send to the attorneys.

4 Q So is that just bidding instructions?

5 A Yes.

6 Q Okay. Is that all that's contained in that?

7 A Yes.

8 Q Is there anywhere on that front cover page
9 which indicates how many pages should follow that
10 cover page?

11 A No, I don't see anything on the front page.

12 Q And what is the date of that document, if
13 there is one on that front page?

14 A Sure. June 1st of 2007.

15 Q So that would've been the -- apparently the
16 cover letter to the original foreclosure package that
17 we talked about --

18 A Yes.

19 Q -- earlier today?

20 A (Nods head.)

21 Q And with respect to that, who does it
22 indicate that it is to?

23 A Scott Humphrey.

24 Q Who does it indicate that it is from?

25 A Fidelity National Foreclosure & Bankruptcy

1 Solutions.

2 Q And that's now LPS, correct?

3 A LPS Default Solutions, yes.

4 Q Right. I'm sorry, I should've made that
5 distinction.

6 A No, that's okay.

7 Q And so, I'm with you now that we've gone
8 through these documents together, I agree that that --
9 the documents attached to that, I don't know how they
10 got in order, but they obviously don't belong attached
11 to that.

12 A No, they do not belong attached to this.

13 Q So if you want to, snatch the top sheet off,
14 we'll just label No. 5, and the others we just won't
15 mark because they're bidding instructions, and I can
16 just put them back in my stack of things.

17 MR. CASH: Okay.

18 MR. WOOTEN: Or if you want me to tear it
19 off --

20 THE WITNESS: You tear it off.

21 MR. WOOTEN: Is she worried about tearing up
22 a hundred dollar bill or something?

23 MS. NEWMAN: No, no, no. Now, does that
24 second document go with it?

25 MR. WOOTEN: Well --

1 THE WITNESS: That just --

2 MR. WOOTEN: The second sheet indicates that
3 it comes from Mendota Heights, and it says Option
4 One foreclosure documents, and it says: The
5 official cover sheet --

6 THE WITNESS: That's the cover sheet.

7 MR. WOOTEN: -- and foreclosure documents
8 are forthcoming.

9 BY MR. WOOTEN:

10 Q I think it might actually have been in
11 reverse. Maybe it should have been --

12 A Yeah.

13 Q -- first and this one should've been second.

14 A That's correct.

15 MR. WOOTEN: Let's tear off those two.

16 And do we have a stapler, Ms. Court
17 Reporter. Clip? If we don't, we'll get one.
18 That'll be fine. Let's just use that.

19 And we will detach these other documents
20 since they obviously don't belong. We'll just
21 return that to my stack of things.

22 BY MR. WOOTEN:

23 Q Y'all ran out at lunchtime, and, of course,
24 this is dated today's date and time and y'all got this
25 stuff pulled down by some employees, and this was with

1 respect to some of the screens within the MSP fields
2 that we talked about in our notice of deposition?

3 A That's correct.

4 Q I think y'all actually were able to
5 determine that you could figure out that you could
6 print those things from an LPS station; is that right?

7 A Yes, we were able to access them.

8 (Plaintiffs' Exhibit No. 26 marked for
9 identification.)

10 Q Okay. And this indicates that it is a
11 corporate advance history screen. Does that
12 indicate -- is that a correct representation of that
13 document?

14 A Yes at the top, yes.

15 Which I believe matches up with what you
16 provided me just a little while ago.

17 Q Sure, I think you're right. I don't think
18 there's anything spooky about those numbers at all.

19 And then this is a -- called a fee activity
20 ledger or the Fee 1 screen, as the MSP training people
21 refer to it?

22 (Plaintiffs' Exhibit No. 27 marked for
23 identification.)

24 A Yes, that's what it looks like. That looks
25 to be tracking fees that are assessed by Option One.

1 (Plaintiffs' Exhibit No. 28 marked for
2 identification.)

3 Q Right. We pulled off what is labeled as a
4 P309, which is -- appears to be a life of loan
5 transaction sheet. I'll hand you that, represent to
6 you that what your counsel told me was that that is
7 the P309 form.

8 A Okay.

9 Q And you had not seen that prior to printing
10 it off --

11 A No.

12 Q -- and bringing it in here, right?

13 A No, I have not.

14 Q And that was a document you were able to
15 access through --

16 A Yes, we were able to access it.

17 Q -- LPS?

18 A Associates could access it, they just don't
19 have the ability to change any of the information.

20 Q Sure.

21 A And to be honest with you, I don't -- I do
22 not know how to read this.

23 Q Sure. And I'm not necessarily asking you
24 to, as much as asking you to identify that that is, in
25 fact, what you guys represented to me is the P309

1 form?

2 A Yes, it is.

3 (Plaintiffs' Exhibit No. 29 marked for
4 identification.)

5 Q Okay. This document, or set of documents
6 labeled 29 appears to be, again, another batch of
7 those images which were pulled off during a lunch
8 break?

9 A Uh-huh.

10 Q That appears to be the invoices submitted by
11 the vendors associated with this account; is that
12 right?

13 A That's correct. That have been submitted
14 through Invoice Management.

15 Q Okay. Is there any information that was
16 submitted through Invoice Management with respect to
17 remittances to pay those invoices?

18 A Not that I know of.

19 Q With respect to this entity that -- LPS, the
20 spinoff that took place about a year ago, you said the
21 name change took place in February of 2009?

22 A I don't know the exact date. I think it was
23 approximately February.

24 MR. WOOTEN: If y'all want to take about
25 five minutes and give me a break, I think I may

1 be where I can stop.

2 THE VIDEOGRAPHER: Off record at 4:51.

3 (Brief recess.)

4 THE VIDEOGRAPHER: Back on record at 5:06,
5 beginning Videotape No. 7.

6 MR. WOOTEN: We've been at this a long time,
7 Mr. Newland, and appreciate your cooperation in
8 answering my questions today with respect to
9 this. I've looked back at my notes and gone
10 through the other documents I had here that were
11 unmarked, and I think what I'm going to do at
12 this point is shut down my questioning. Your
13 lawyer may have other questions for you.

14 MR. CASH: Okay. I'm just going to have a
15 few.

16 CROSS EXAMINATION

17 BY MR. CASH:

18 Q This document that we looked at, Document
19 16, which says editor is The Summit, which is a
20 publication that had been talked about before, do you
21 remember that?

22 A Yes, I do.

23 Q Is it possible for that to be an authentic
24 Summit document?

25 A No, it's not.

1 Q Why is that?

2 A We stopped publishing The Summit as of April
3 2008.

4 Q And that's dated when?

5 A November 1st, 2008.

6 Q Okay. So this would've been after there was
7 no longer a Summit publication?

8 A That's correct.

9 Q All right. Let me take you more to kind of
10 what this case is about. We've answered a lot of
11 general questions. I want to focus on some very
12 specific questions with regard to Fidelity National
13 Foreclosure & Bankruptcy Solutions, all right?

14 A Yes, sir.

15 Q In the complaint, there's a statement of
16 facts, and I want to talk about those. On
17 Paragraph 9, it says: On November 2nd, 2006,
18 plaintiffs' home burned due to an electrical fire,
19 leaving plaintiffs' home uninhabitable. Upon
20 receiving their notice for a mortgage payment
21 immediately following the fire, plaintiffs advised
22 Option One of the fire and informed Option One the
23 mortgage would be satisfied as soon as the insurance
24 proceeds were paid.

25 That was notice that went to Option One, not

1 to Fidelity, correct?

2 A That's correct.

3 Q On numerous occasions, plaintiffs contacted
4 Option One requesting a payoff figure, which took
5 several months to obtain.

6 Plaintiffs never contacted Fidelity for a
7 payoff figure, did they?

8 A No, they did not.

9 Q All right. Here it says: On March 23rd,
10 plaintiffs mailed to Option One, two checks, a State
11 Farm check in the amount of 138,482, which plaintiffs
12 had endorsed over to Option One, along with their
13 personal check in the amount of \$6,304.04, which
14 represented the figure they were given to pay off the
15 mortgage.

16 Those checks did not come to Fidelity, did
17 they?

18 A No, they did not.

19 Q Of the 6,304.04, Option One asserted 4,000
20 was a prepayment penalty.

21 Fidelity doesn't assess or decide what
22 prepayment penalties are, do they?

23 A No, they do not.

24 Q That's an Option One decision?

25 A Yes, it is.

1 Q Option One initially refused to accept two
2 checks, insisting on a single payment.

3 Did Fidelity have anything to do with Option
4 One taking one check, two checks, five checks; is that
5 anything that you control?

6 A No, we have no control of that.

7 Q Upon learning State Farm would not issue a
8 second check, Option One then deposited the State Farm
9 check, but continued to -- continued to refuse
10 plaintiffs' check on the grounds plaintiffs' check was
11 not a certified check and Option One would not accept
12 personal checks in the sums in excess of \$5,000.

13 Is that a Fidelity policy regarding
14 accepting noncertified checks?

15 A No, it's not.

16 Q Did Fidelity have anything to do with
17 whether to accept the payments from the plaintiffs or
18 not accept payments from the plaintiffs?

19 A No, we did not.

20 Q Option One refused to apply the payments it
21 received to plaintiffs' mortgage and continued to
22 assess fees and penalties against plaintiffs' mortgage
23 loan.

24 Did Fidelity assess any fees or any
25 penalties against plaintiffs' mortgage loan?

1 A No, we did not.

2 Q Did Fidelity make any decision whether to
3 apply payments or not apply payments to plaintiffs'
4 mortgage loan?

5 A No, we did not.

6 MR. WOOTEN: Let me interrupt. I don't mean
7 to interrupt you, I know it's been --

8 MR. CASH: That's okay.

9 MR. WOOTEN: -- a long day, but let's just
10 clarify. When you say Fidelity, you're talking
11 about LPS Default Solutions, not any of the other
12 Fidelity companies?

13 MR. CASH: No, what I'm talking about is --
14 because I want to be clear and use the same name
15 that's in the complaint. I'm talking what was
16 known as and sued as Fidelity National
17 Foreclosure & Bankruptcy Solutions.

18 MR. WOOTEN: Which became LPS Default
19 Solutions, which is how we referred to them
20 today, for clarity.

21 MR. CASH: Right. So for my purposes, I'm
22 going to -- when I refer to Fidelity in my
23 questions, and I want you to understand this, I'm
24 referring to the defendant Fidelity National
25 Foreclosure & Bankruptcy Solutions.

1 THE WITNESS: It just clarified that up
2 front.

3 BY MR. CASH:

4 Q Okay. In April 2007, it said defendants,
5 plural, force placed homeowners' insurance on the
6 plaintiffs' residence, knowing the home had suffered
7 fire damage and was uninhabitable.

8 Did Fidelity have anything to do with
9 placing forced homeowners' insurance on the
10 plaintiffs' property?

11 A No, we did not.

12 Q Is that a decision that would be made in any
13 way by Fidelity?

14 A No.

15 Q Paragraph 13: Shortly thereafter,
16 defendants, plural, filed a notice of foreclosure,
17 which was later withdrawn. In August 2007, a second
18 notice of foreclosure was filed with the DeKalb County
19 Probate Court, and notices were placed in the DeKalb
20 Advertiser posting the date the foreclosure would take
21 place. Upon information and belief, the foreclosure
22 sale did take place on September 24th, 2007, but no
23 foreclosure deed has been filed.

24 Is a decision to foreclose a decision of
25 Fidelity's or is it Option One's decision whether or

1 not to foreclose?

2 A It's Option One's decision.

3 Q Does Fidelity have any input into or power
4 to change the decisions of Option One whether or not
5 they want to foreclose?

6 A No.

7 Q Plaintiffs allege that defendants placed
8 upon the subject mortgage charges and fees that were
9 both false and illegal, including placing single
10 premium vendor placed insurance or force placed
11 insurance upon the loan account of the plaintiffs in
12 violation of law. That's Paragraph 14.

13 Did Fidelity place any type of charge or fee
14 on this loan, including single premium vendor placed
15 insurance?

16 A No, we did not.

17 Q Does Fidelity have the authority or ability
18 to place fees and charges on this Option One loan?

19 A No, we do not.

20 Q The plaintiffs allege that the foreclosure
21 is improper and illegal for all of the following
22 reasons: A. The defendant accepted moneys from the
23 plaintiff and failed to apply those funds to their
24 account in a timely and appropriate fashion.

25 Did Fidelity accept any money from the

1 plaintiff?

2 A No, we did not.

3 Q Did Fidelity have any ability to apply those
4 funds to the plaintiffs' account?

5 A No, we did not.

6 Q Two: The defendants charged and applied
7 significant fees and expenses to the plaintiffs'
8 account in violation of law and without legal
9 justification.

10 As to 15 B, does Fidelity have -- does
11 Fidelity place any fees or expenses on the plaintiffs'
12 account in this case?

13 A No, we did not.

14 Q C. The defendants failed to post payments
15 to the plaintiffs' account so that defendants could
16 create a default or a false pretense of default.

17 Does Fidelity have anything to do with
18 posting payments to the plaintiffs' account?

19 A No, we do not.

20 Q Does it decide what payments to post or not
21 post?

22 A No, that's the client's responsibility.

23 Q D. The defendants failed to engage in loss
24 mitigation as required in its agreement with its
25 investors.

1 Does Fidelity have any agreement with any
2 investors to engage in loss mitigation?

3 A No, we do not.

4 Q Is it Fidelity's role to engage in loss
5 mitigation under any agreement with investors?

6 A No, it's not.

7 Q This agreement is called a Pooling and
8 Servicing Agreement, or PSA, and is the document which
9 sets out this defendants' right and responsibilities
10 with respect to managing and curing defaults by a
11 mortgagor.

12 Are you a party to any pooling or servicing
13 agreement, or PSA?

14 A No, we're not.

15 Q And by "you" I mean Fidelity.

16 A No.

17 Q The plaintiffs are an intended third-party
18 beneficiary of this agreement because the failure of
19 the defendants to properly manage and cure a default
20 by the mortgagor results in a loss to the trust
21 investors.

22 Again, are you, Fidelity, a subject to any
23 pooling and services agreement having to do with the
24 Woods' loan?

25 A No.

1 Q E. The defendants also, quote, packed,
2 closed quote, its charges against the plaintiffs'
3 account, such as repeatedly paying for drive-by
4 inspections, or no inspections at all, of plaintiffs'
5 home, when they knew the home was destroyed.

6 Did you add any charges, and by "you" I mean
7 Fidelity, add any charges against the plaintiffs'
8 account --

9 A No.

10 Q -- for any such --

11 A No, we did not.

12 Q All right. F. The defendants force placed
13 homeowners' insurance on the property and placed such
14 insurance in an amount and cost that is unreasonable,
15 predatory and unconscionable and did so to create a
16 false default with the specific purpose of instituting
17 the foreclosure against the plaintiffs.

18 Did you, Fidelity, force place any type of
19 homeowners' insurance on the property?

20 A No, we did not.

21 Q Did you in any way attempt to create a
22 default?

23 A No, we did not.

24 Q Do you have the authority to assess any
25 charges to the loan that would create a default?

1 A No, we do not.

2 Q The defendants lacked standing to foreclose
3 at a time in which they allegedly foreclosed under
4 Alabama law and the foreclosure is void ab initio.

5 Again, did Fidelity actually foreclose on
6 this property or did Option One?

7 A Option One.

8 Q Okay. The defendants are engaged in a
9 pattern of conduct with respect to their mortgaging
10 servicing practices whereby the defendants seek to
11 create false or bogus defaults so they can foreclose
12 on property for the purpose of either equity stripping
13 or claiming various insurance coverages that are
14 available for servicers who foreclose on property.

15 First, is Fidelity a servicer?

16 A No, we're not.

17 Q And, in fact, subservicer is mentioned
18 earlier. The services you provide aren't even
19 under -- aren't even subservice, are they?

20 A No, we're not even subservice, no.

21 Q Okay. Now, is there any way that you can
22 create false or bogus defaults with the services you
23 provide?

24 A No, we cannot.

25 Q And you don't -- if property is foreclosed

1 upon, you don't get to equity strip it, do you? It
2 doesn't --

3 A No.

4 Q You don't make more or less?

5 A No.

6 Q And you don't get any insurance coverages as
7 a servicer for foreclosure on a property, do you?

8 A No, we do not.

9 Q Paragraph 17: The defendants are engaged in
10 a pattern and practice of conduct which is designed to
11 create or manufacture false defaults for the purpose
12 of churning fees and charges on the client's mortgage
13 account to increase profits to the defendants from
14 fees.

15 Do you charge any fees to the customer, the
16 borrower, like the Woods, do you charge any fees to
17 their account?

18 A No, we do not.

19 Q The defendants' conduct is oppressive,
20 wanton, malicious and intentional, and is designed to
21 profit the defendant at the expense of the mortgagors'
22 home.

23 Do you have any fees, any activities, which
24 add any cost or fees to the mortgagors' home from
25 which you profit?

1 A No, we do not.

2 Q Or to their loan from which you profit?

3 A No, we do not.

4 Q Paragraph 20 again talks about practices
5 designed by their very nature to cause plaintiffs'
6 home to be declared in default for the purpose of
7 imposing fees and charges to the account which could
8 then be claimed from the investors or trust holding
9 the mortgage so the defendants could increase their
10 profits.

11 Does a foreclosure on their home give you
12 any ability to claim any fees from investor or trusts
13 holding the mortgage?

14 A No.

15 Q By "you" I mean Fidelity.

16 A No.

17 Q Do you charge any fees that would be paid by
18 investors or trusts holding the mortgage?

19 A No, we do not.

20 Q This conduct was wanton in that the
21 defendants knew or should've known that by
22 manufacturing a default and imposing bogus or illegal
23 fees against the mortgagors that injury would result
24 to the mortgagors in the form of payment of illegal or
25 unauthorized fees or in the loss of the mortgagors'

1 home through foreclosure.

2 Again, imposing bogus or illegal fees, did
3 you impose any fees whatsoever, by "you" I mean
4 Fidelity, the defendant in this case, any fees
5 whatsoever upon the plaintiffs?

6 A No, we did not.

7 Q Okay. Under Count II, Negligence,
8 Paragraph 24, it says: The actions of defendants were
9 negligent in that the defendants failed to properly
10 apply and to post payments to the account of
11 plaintiffs when received and in the proper amounts.

12 Did you receive, you Fidelity, the
13 defendant, receive any fees from plaintiffs?

14 A No, we did not.

15 Q Or any payments from plaintiffs?

16 A No, we did not.

17 Q Was it your role or did you have the
18 authority to post payments to the account of
19 plaintiffs?

20 A We have no authority to do that.

21 Q Do you make any decision when to post them
22 or how much they should be -- in what amount they
23 should be posted?

24 A No, we do not.

25 Q The defendants placed payments into suspense

1 rather than applying the payments to the plaintiffs'
2 account.

3 Do -- does Fidelity play any role in
4 deciding whether payments are to be placed in suspense
5 or applied to the plaintiffs' account?

6 A No, we do not.

7 Q You made no decision in that regard and had
8 no authority to do so?

9 A Absolutely not.

10 Q The defendants placed charges onto the
11 account of the plaintiffs that were either wrong,
12 illegal, unauthorized or in a wrong amount and failed
13 or refused to correct the amount.

14 Did you place, and by you, Fidelity, the
15 defendant in this case, place any charges on the
16 plaintiffs' account?

17 A No, we did not.

18 Q Here it says: The plaintiffs and defendants
19 are parties to the contract in the form of a mortgage
20 that exists between them. It's a breach of contract
21 claim.

22 Do you have any contractual relation
23 whatsoever with Mr. and Mrs. Wood, the plaintiffs in
24 this case?

25 A No, we do not.

1 Q Have you ever entered into any mortgage or
2 any other contract with the Woods in this case?

3 A No, we did not.

4 Q Count IV, Breach of Contract, the pooling
5 and services agreement. Under Count IV, that
6 basically allege that the pooling and services
7 agreement is a contract and that the defendants in
8 this case were acting as servicer for the subject
9 mortgage which had been securitized.

10 So let's start with that. Were you acting
11 as a servicer of this loan?

12 A No.

13 Q At any time did you enter into a pooling and
14 servicing agreement regarding this loan?

15 A No, we did not.

16 Q And if you're not a party to the pooling and
17 servicing agreement, I guess you can't be in breach of
18 it, can you?

19 A No, you cannot.

20 Q All right. Unjust enrichment. Again, they
21 allege that the actions of defendants would result in
22 plaintiffs -- in defendants being unjustly enriched,
23 forced to pay charges that were illegal, wrong in
24 character, wrong in amount, unauthorized, or otherwise
25 improper.

1 Did you receive from the plaintiffs any
2 payment of any fees or charges in this case
3 whatsoever?

4 A No, we did not.

5 Q Do you have -- did you have any contact with
6 the plaintiffs in this case whatsoever?

7 A No, we did not.

8 Q Here it says: Defendants instituted
9 foreclosure against the plaintiffs.

10 Did Fidelity foreclose on this loan?

11 A No, we did not.

12 Q Who's -- who was the holder of the note that
13 foreclosed?

14 A Option One.

15 Q Slander and defamation. Defendants made
16 false, slanderous or defamatory statements about
17 plaintiffs. Defendants have reported negative credit
18 information to credit reporting agencies concerning
19 the plaintiffs with knowledge that said information
20 was incorrect.

21 Did Fidelity, the defendant in this case,
22 make any reports to any credit agency of any kind
23 regarding any allegations regarding the Woods in any
24 way, shape, or form?

25 A No, it did not.

1 MR. CASH: That's it. Pass the witness.

2 Thank you.

3 REDIRECT EXAMINATION

4 BY MR. WOOTEN:

5 Q With respect to the document y'all talked
6 about, Plaintiffs' Exhibit 15, Mr. Newland, this first
7 page talks about desktop Process Management,
8 previously known as NewTrak, and explains that the
9 desktop Process Management system is and is replacing
10 NewTrak. Is that information on that page accurate
11 with respect to the items that it describes?

12 A That's --

13 Q Is that correct?

14 A That's approximately right.

15 Q The second page, the information contained
16 on the second page on this side, does that relate
17 correct information regarding Fidelity?

18 A As far as our addresses, yes.

19 Q Persons involved, that sort of thing? Scott
20 Barnes, president and COO?

21 A Yes, that's correct.

22 Q Customer/attorney relations, those people
23 all appear to be Fidelity employees?

24 A Yes, they're all Fidelity employees, except
25 for Dennis Stemmler's no longer with the company.

1 Q When did he leave?

2 A I do not know.

3 Q With respect to the information on that
4 page, does all that information appear to be correct
5 also?

6 A Looks to be correct.

7 Q And again, I hate to be tedious, but take a
8 look at that page. Tell me if there's anything on
9 that page that appears to be incorrect.

10 A That looks correct.

11 Q With respect to the page that had the
12 information on it about the APR incentive winners, you
13 indicated when I handed you that document that you no
14 longer pay incentives to the APR winners, right?

15 A That's correct.

16 Q When did that process come to a conclusion?

17 A I do not recall.

18 Q Has it been since the name change of the
19 company?

20 A It was prior to the name change of the
21 company.

22 Q So sometime between today and prior to the
23 name change, you don't remember exactly when, you quit
24 paying incentives?

25 A That's correct. Well, prior to the name

1 change.

2 Q Right. But there was a time when Fidelity
3 paid incentives for their high APR firms?

4 A There were times that we did pay incentives,
5 yes.

6 Q The information on the next page, where it
7 talks about -- it says 2007 bankruptcy winners of APR.

8 A That's the reason why November 1st of 2008
9 seems strange in reference to the front copy of this
10 document.

11 Q Sure.

12 A So --

13 Q And I'm not saying that that date is
14 absolutely correct, that --

15 A But that's what you insinuated when you gave
16 it to me --

17 Q Right.

18 A -- that date was correct.

19 Q And I thought that it was.

20 A Okay.

21 Q I mean, I -- and apparently, it's not. So
22 I'm not trying to misrepresent anything to you or your
23 lawyers or the Court. I'm just trying to
24 verify that --

25 A Sure.

1 Q -- the information in this document is
2 accurate.

3 A (Nods head.)

4 Q So this says -- this mentions 2007
5 bankruptcy winners of APR?

6 A Uh-huh.

7 Q Appears to be that that's reflective of the
8 year?

9 A Yeah, without going back, yes.

10 Q Right. And then this part talks about your
11 service excellence, honorable mentions?

12 A Uh-huh.

13 Q And that's a big long list, says 176 firms.
14 Apparently, again, that's for the year, and that --

15 A That's correct.

16 Q -- takes up several pages.

17 Then it has a spotlight on your referrals
18 department. And is that information all also correct?

19 A Well, it's -- looks to be.

20 Q And the information with respect to this
21 referral production, referral issues, referral reports
22 on the next page, does that all also appear to be
23 correct?

24 A From my -- from what I recall, yes.

25 Q Sure. And then there's another page there

1 dealing with your referrals, and looks like folks
2 employed thereby --

3 A Yes.

4 Q -- does that seem correct?

5 And then this talks about your service data
6 on demand, desktop integration services.

7 A Uh-huh.

8 Q Does all that appear to be correct?

9 A Yes.

10 Q And then this last page, talks about payoff
11 express in default, and it says: FIS MSP, Process
12 Management will provide real-time payoff quotes for
13 loans serviced using the FIS MSP platform.

14 A Yeah, provide them to our attorneys.

15 Q Right. And that was the information you're
16 talking about with respect to the prices on the
17 properties that were referred for foreclosure, right?

18 A Prices --

19 Q On the loans that were on -- payoffs on the
20 loans that were in foreclosure?

21 A Yeah, we basically referred the information
22 to the attorneys for the payoffs.

23 Q Sure.

24 A Uh-huh.

25 Q And that -- what that's saying is that

1 through Process Management coupled with MSP, you can
2 get that information, right?

3 A That's correct.

4 Q And then the last couple of pages are
5 dealing with recognition of employees, apparently,
6 some of your document processing level people, right?

7 A Uh-huh.

8 Q So it says November 1st, 2008, but looking
9 through the actual documents, it makes reference to
10 the year -- yearly awards for 2007?

11 A That's correct.

12 Q So we know that that had to be complete
13 before this information could come out, right?

14 A Yes.

15 Q And you're not disputing the accuracy of the
16 information in the document, rather, this date, which
17 appears, obviously, to be wrong.

18 A Yes.

19 Q Okay. Is it possible that this could've
20 been a January of 2008 document, since it refers to
21 your 2007 APR winners?

22 A I don't know.

23 Q But we know that it came after 2007, right?

24 A We believe it did, yes.

25 Q Okay.

1 A I wouldn't know without seeing the original
2 documents if that was the case.

3 Q Sure. But with respect to the information
4 contained in there, you don't dispute the accuracy of
5 the document?

6 A I don't dispute it.

7 Q With respect -- your lawyer sat there and
8 went through the complaint line by line, and that's
9 fine, but with respect to what your actual obligations
10 are for the services that you've agreed to provide, we
11 don't have that information until we review the
12 contracts that govern your relationship both with
13 Mr. Humphrey's firm and Option One, right?

14 A It's your determination.

15 Q I understand that. What I'm saying is, is
16 that you can sit here today and say that you don't
17 have any rights or duties that implicate the mortgage
18 or the contract or a pooling and servicing agreement,
19 but without the actual contracts for what you agreed
20 to do for Option One, we really don't know what your
21 company agreed to do, do we?

22 A I don't know. It's up to your
23 determination.

24 Q Sure. So, I mean, I understand that you're
25 saying that your company does not assess fees to the

1 account, but if the contracts that you've signed with
2 Option One state that you manage the foreclosure
3 process for them, then it would be your company's
4 decision as to how those things were done, right?

5 A No, not necessarily.

6 Q Okay. Well, I guess we'll try to work
7 through that when we actually get our hands on those
8 contracts, okay?

9 A It's up to you.

10 Q Sure.

11 MR. WOOTEN: All right. I don't have
12 anything else.

13 MR. CASH: No, I think --

14 MR. LAWLER: Nothing.

15 MR. CASH: I think our next step is to get a
16 summary judgment.

17 MR. WOOTEN: What we need to do is talk
18 about those contracts also, so we can --

19 MR. CASH: Well, I mean --

20 THE REPORTER: Are we on the record?

21 MR. WOOTEN: No. No.

22 MR. CASH: No, no, no.

23 THE VIDEOGRAPHER: Ends the deposition at
24 5:30.

25 (Deposition concluded at 5:30 p.m.)

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CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Cindy D. McClary, the undersigned
authority, certify that BILL NEWLAND personally
appeared before me and was duly sworn.

WITNESS my hand and official seal this 25th
day of June, 2009.

CINDY D. McCLARY, RPR, CRR
Notary Public - State of Florida
My Commission No. DD617209
My Commission expires: 1/10/2011

C E R T I F I C A T E

STATE OF FLORIDA)

COUNTY OF DUVAL)

I, Cindy D. McClary, Registered Professional Reporter, certify that I was authorized to and did stenographically report the videotaped deposition of BILL NEWLAND; and that pages 1 through 280, inclusive, are a true record of my stenographic notes.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 25th day of June, 2009.

CINDY D. McCLARY, RPR, CRR

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